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1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

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5 DAVID FERGUSON, et al., :

6 :

7 :

8 Plaintiffs, :

9 vs. :

10 :

11 RYDER SYSTEM, INC., et :

12 al., :

13 :

14 Defendants. :

15 - - - - -

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12 Deposition of DAVID EDWARD FERGUSON,

13 plaintiff herein, called by the defendants for

14 cross-examination, pursuant to the Federal Rules of

15 Civil Procedure, taken before me, Wendy L. Welsh, a

16 Registered Diplomat Reporter and Notary Public in

17 and for the State of Ohio, at the offices of Kohnen

18 & Patton, 1400 Carew Tower, Cincinnati, Ohio, on

19 Thursday, November 21, 2002, at 1:18 a.m.

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24 - - -

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S T I P U L A T I O N S

It is stipulated by and among counsel for the respective parties that the deposition of DAVID EDWARD FERGUSON, plaintiff herein, called by the defendants for cross-examination pursuant to the Federal Rules of Civil Procedure, may be taken at this time by the notary; that said deposition may be reduced to writing in stenotype by the notary, whose notes may then be transcribed out of the presence of the witness; and that proof of the official character and qualifications of the notary is expressly waived.

- - -

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1 DAVID EDWARD FERGUSON

2 being by me first duly cautioned and sworn, deposes

3 and says as follows:

4 CROSS-EXAMINATION

5 BY MR. LARSON:

6 Q. Tell us your full name, please.

7 A. David Edward Ferguson.

8 Q. Where do you live, Mr. Ferguson?

9 A. 5885 Lawrenceburg Road, Harrison, Ohio,  
10 45030.

11 Q. Mr. Ferguson, we're here to take your  
12 deposition today in a lawsuit that is currently  
13 pending here in the federal court in Cincinnati. Do  
14 you understand that?

15 A. Yes, sir.

16 Q. Have you ever had your deposition taken  
17 before?

18 A. Yes, sir.

19 Q. And when was that?

20 A. The best I recall it was probably four or  
21 five years ago.

22 Q. What were the circumstances of that  
23 deposition?

24 A. It was in a lawsuit that one of our

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1 drivers had with Allied and I was going to be used  
2 as a witness. And I gave a deposition, but I was  
3 never called as a witness.

4 Q. All right. Was that an injury that that  
5 driver had sustained?

6 A. I believe it was.

7 Q. I don't want to go into any detail on that  
8 other than what was the type of injury that was  
9 involved in that case, as to how it happened?

10 A. Industrial injury.

11 Q. Okay. Working on his truck?

12 A. Hydraulic line exploded and put chemicals  
13 in his eyes.

14 Q. I'm going to ask, and as are some of these  
15 other lawyers here today, several questions, and you  
16 heard Mr. Koustmer give some direction to the prior  
17 witness about keeping your answers audible and I'd  
18 ask for you to do that. Let us finish our questions  
19 and we'll let you finish your answers so we're not  
20 talking on top of each other.

21 A. Yes, sir.

22 Q. Is that agreeable with you?

23 A. Yes, sir.

24 Q. All right. You, we understand, at least

7

1 up until September 2000, were a car hauler, correct?

2 A. Yes, sir.

3 Q. Have you hauled any cars since the date of  
4 the injury that we're here about today?

5 A. No, sir.

6 Q. And other than the reduced duty, whatever  
7 you want to call it, that you were back on a basis  
8 with Allied doing limited duties, have you had any  
9 other type of employment at all since the day of  
10 your accident until today?

11 A. No, sir.

12 Q. Have you applied for work anywhere else?

13 A. No, sir.

14 Q. Okay.

15 A. Excuse me, sir. I didn't apply for work,  
16 I did give a resume to the International Brotherhood  
17 of Teamsters as a representative -- field  
18 representative, but that was -- would be an elected  
19 position. It would have -- even I could still be an  
20 employee of Allied and still hold the position.

21 Q. Is that a paid position?

22 A. Yes, sir, it is. It would be a paid  
23 position.

24 Q. Have you stood for election in that

1 regard?

2 A. No, sir. It's -- it's never came about  
3 yet.

4 Q. Something that's still in the works maybe?

5 A. Possible.

6 Q. What are the current restrictions that  
7 you're under as far as your doctor's told you,  
8 either lifting or anything like that?

9 A. No prolonged standing, if I sit too long,  
10 if I'm uncomfortable, get up, sit down, back and  
11 forth, so forth. Light work as far as like I think  
12 the limit was 55 pounds I believe it was. I believe  
13 to my knowledge it was 55 pounds.

14 Q. And are you currently under the care of a  
15 physician?

16 A. Yes, sir.

17 Q. And which doctor is that?

18 A. It's pain management. It's an alternative  
19 to surgery.

20 Q. Is there a specific physician that  
21 oversees your care in that regard?

22 A. Yes, sir, a Dr. Simons.

23 Q. And does the pain management program that  
24 you're under, does that include medication?



1 A. Yes, sir, it does.

2 Q. Tell us what your current prescription  
3 calls for.

4 A. I take -- in the mornings I take three  
5 pills. I take -- I might mispronounce some of these  
6 medications because some of them's got extensive  
7 names to them.

8 Q. Do your best.

9 A. I take one pain medication, Kadian, which  
10 is a morphine. I take Celebrex with that and then I  
11 take another drug for anti-seizure. At noon I take  
12 Celebrex -- or later on in the afternoon about 3:00  
13 I take Celebrex, another pain medication, which is  
14 called Norco, and another one of those anti-seizure  
15 pills. And at night before I go to bed, two hours  
16 before I go to bed I take a muscle relaxer,  
17 antidepressant and another pill for the  
18 anti-seizure.

19 Q. Have you ever had a seizure?

20 A. No, sir.

21 Q. Is the anti-seizure medication, is it  
22 given to prevent seizures or is it given because  
23 there's some benefits from that drug that relate to  
24 your pain control?

1 A. It's related to the pain control.

2 Q. How effective is the regimen that you're  
3 under now as far as pain management is concerned?

4 A. The new regimen I'm under, it is better.  
5 It's considerably better than what it was before I  
6 went on it, but I still have a lot of pain.

7 Q. I take it that your pain levels ebb and  
8 flow a little bit based upon the level of activity  
9 that you do, would that be correct? Get worse and  
10 get better depending on how much you're moving  
11 around?

12 A. Well, no, sir. Usually the level of pain  
13 is more consistent with the medication, what time I  
14 take what medication. If I take the morphine,  
15 naturally I'm going to have a better morning than I  
16 have a night.

17 Q. So as the medicine starts to wear off is  
18 when you start to feel a little bit more sensitivity  
19 to the pain?

20 A. Sure.

21 Q. Just as we're sitting here today during  
22 the previous deposition and this one, on a scale of  
23 one to ten how would you rate your pain?

24 A. Five to six.

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1 Q. And where is the pain located?

2 A. Lower lumbar region.

3 Q. Are you having any problems into either  
4 leg?

5 A. My left leg, it goes numb on me.

6 Q. Is there any pain there or is it just the  
7 numbness?

8 A. Just the numbness.

9 Q. I think I saw in your records a few  
10 occasions where you had actually fallen because of  
11 some numbness in your leg.

12 A. My leg, I -- on several occasions I've  
13 lost the use of my leg. I fell and broke my right  
14 toe on my right foot, my big toe on my right foot.  
15 And I put a gash in my left leg on the second  
16 occasion it happened.

17 Q. Due to falls?

18 A. Yes, sir.

19 Q. Have any of your treating doctors  
20 indicated that you would benefit from surgery?

21 A. Dr. Roberts told me that I wasn't a  
22 candidate at the time, that he would like to try the  
23 pain management because he told me that the type of  
24 surgery he would do I would be back within a year to

1 repeat the surgery. And I told him that surgery was  
2 not an option for me, that I'd like to try the pain  
3 management so I could go back to work. And that's  
4 what me and him agreed on and that's when I started  
5 the pain management.

6 Q. Have you been back to Dr. Roberts since  
7 you started on the pain management protocol?

8 A. No, sir, I haven't. No, sir.

9 Q. But I understand correctly that although  
10 the pain management regime you're under now is an  
11 improvement over what you had you're still not to  
12 the level where you think you can go back to work as  
13 a car hauler?

14 A. I couldn't do the heavy car hauling,  
15 lifting, no, sir, I couldn't, I don't believe, I  
16 couldn't --

17 Q. How about driving a truck, but not being  
18 involved with the cargo, is that something that you  
19 would be suited for at this point?

20 A. That part, sir, I don't know. I would  
21 have -- I can't sit for no four or five hours  
22 without having to get up, nothing like that.

23 Q. Have you discussed that possibility with  
24 Dr. Simons or any of the other doctors about other

1 types of work that you might be able to do provided  
2 you could stand up and stretch and that sort of  
3 thing?

4 A. The only thing I've discussed with them,  
5 sir, is the fact that I want to go back to work at  
6 my job at Allied hauling cars to get my time in with  
7 the Teamsters.

8 Q. By getting your time in, to get to your  
9 retirement level?

10 A. Yes, sir.

11 Q. How much more do you need to do that?

12 A. I need six years.

13 Q. Do you currently have a Workers'  
14 Compensation claim pending, or has that been  
15 resolved?

16 A. I'm -- they give me a check each -- well,  
17 they haven't gave me a check in a while, but they  
18 were giving me a check.

19 Q. Okay.

20 A. But I haven't received anything in a  
21 while.

22 Q. Has there been any final disposition  
23 insofar as a permanent rating on your back or  
24 anything like that?

1 A. No, sir.

2 Q. Are you receiving any benefits from the  
3 Teamsters at all?

4 A. No, sir.

5 Q. Are you receiving any benefits from Social  
6 Security administration?

7 A. No, sir.

8 Q. What sources of revenue do you have  
9 currently, if any? Revenue meaning any type,  
10 supplemental payments or benefits.

11 A. Other than what Allied was giving me?

12 Q. Yes.

13 A. The only thing I had, sir, was what little  
14 money we had in the bank and the money we could  
15 borrow is what we've been living on.

16 Q. Have you applied for any benefits from the  
17 Social Security administration?

18 A. No, sir.

19 Q. You originally became a car hauler in  
20 1985?

21 A. Yes, sir.

22 Q. What did you do before that?

23 A. I was a truck driver.

24 Q. Over the road?

1 A. Yes, sir.

2 Q. Who did you drive for?

3 A. TF Dunlap Trucking in Fairfield, Ohio.

4 Q. How long did you work for that company?

5 A. 12 years.

6 Q. What kind of freight did you haul?

7 A. General freight. We hauled Pease  
8 Ever-Strait Doors, I'm sure you wouldn't be familiar  
9 with that. They're a door manufacturing company and  
10 we hauled their doors to the west coast and hauled  
11 their unfinished product back to the plant.

12 Q. And prior to working for Dunlap who did  
13 you work for, if anybody?

14 A. U.S. Plywood-Champion International.

15 Q. What were your duties with that company?

16 A. I was a truck driver.

17 Q. For how long?

18 A. Two years.

19 Q. How about prior to that?

20 A. I was -- I was in the U.S. Service. I was  
21 in the Army.

22 Q. How long did you serve in the military?

23 A. From 1966 and I got out in '69.

24 Q. When you went to work as a car hauler in

1 '85, which company did you start on with?

2 A. Complete Auto Transit.

3 Q. At which terminal?

4 A. Moraine.

5 Q. And did you remain at that terminal  
6 throughout your tenure as a car hauler?

7 A. Yes, sir.

8 Q. What number were you on the seniority  
9 board when you got hurt?

10 A. At that time I was 54 on the board at that  
11 time because they had merged the two boards back.

12 But now I'm in a lot better position because there's  
13 a lot of the young guys that's under me that came  
14 from the area. I'm up on the seniority roster.

15 Q. And that spot is held for you in the event  
16 you're able to return?

17 A. Yes, sir. Absolutely.

18 Q. When you hired on did you undergo some  
19 training?

20 A. Yes, sir.

21 Q. Through Complete Auto Transit?

22 A. Yes, sir.

23 Q. Did they send you somewhere for that or  
24 was that local at the terminal?



1 A. It was local.

2 Q. What did that training generally consist  
3 of?

4 A. How to load and unload cars.

5 Q. Did they have some hands-on demonstration  
6 and also some book teaching or manual teaching?

7 A. No manual teaching. It was just all  
8 hands-on in the yard.

9 Q. How long did that training last?

10 A. Two weeks. And then we were on the road  
11 for a week with another driver.

12 Q. Do you remember the names of any of the  
13 people that trained you?

14 A. Yes, sir, I remember every one.

15 Q. Tell me who they were.

16 A. Dennis Griggs, Phillip Kuchar and Don  
17 Anderson -- or Andrews, excuse me.

18 Q. Andrews?

19 A. Andrews, yes, sir.

20 Q. Now, were these all driver trainers?

21 A. Yes, sir.

22 Q. Were any of them Complete Auto Transit  
23 management people?

24 A. No, sir.

1 Q. Did you get any training from anybody from  
2 management insofar as how to haul cars?

3 A. Not as I recall.

4 Q. Did you, from '85 up until 2000, receive  
5 any type of interim training?

6 A. I'm sure I did because occasionally they  
7 have this -- they'll come up with this three-day --  
8 they'll take everybody in the entire company and  
9 make them go for two hours. And this happens, and  
10 one time I think it was even for three days, but  
11 it's usually not on nothing to do with driving.  
12 It's all don't tear up a car.

13 Q. And from time to time would there be like  
14 safety videos or other types of videos that are  
15 shown to the drivers in the safety meetings?

16 A. Yes, sir.

17 Q. Did you attend safety meetings?

18 A. On occasions, yes.

19 Q. What was the policy about the attendance  
20 of safety meetings? Were drivers expected to  
21 attend?

22 A. Well, sir, the road drivers, they got them  
23 as they came in. If there was -- some guys got to  
24 go, some guys never even went through it. The

1 safety meetings were basically just if a guy was in  
2 they'd put him in the safety class for a couple  
3 hours, paid him for two hours being in the safety  
4 class and that was basically it. Some guys went for  
5 30 minutes and some didn't even go at all.

6 Q. Were those classes always held on-site or  
7 did they take them off site on occasion?

8 A. They were both.

9 Q. And would the same be true with Allied  
10 Systems, would they hold training safety meetings on  
11 a regular basis?

12 A. I'm sorry, sir, I thought you meant --  
13 with the question you asked me prior to this I  
14 thought you were talking about Allied. Were you  
15 referring to Allied or --

16 Q. We started originally talking about  
17 Complete Auto Transit.

18 A. They're all the same company. They were  
19 just bought out by Allied. They're all still the  
20 same people we're all the same that work for  
21 Complete, Commercial, right into Allied, we're all  
22 the same people still.

23 Q. Same drivers?

24 A. Yes, sir.

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1 Q. And a lot of the same managers?

2 A. Well, not management. They fired most of  
3 the them.

4 Q. Allied did?

5 A. Yes, sir. I believe they've got a couple  
6 left. I think they fired two last week.

7 Q. Now, I take it that from what you just  
8 said you keep up on what's going on at that terminal  
9 through your acquaintances that are driving there?

10 A. When I was at the terminals, sir, I was  
11 union representative. So naturally I did -- drivers  
12 call me asking me questions, advice and so forth and  
13 so on.

14 Q. Was there a title to the union position?

15 A. Yes, sir, alternate steward.

16 Q. How long did you hold that position?

17 A. I believe it was either three and a half,  
18 four years I believe, sir.

19 Q. What types of things would you usually get  
20 involved in in that position?

21 A. A union steward's job, the alternate's job  
22 is when the steward's not there he is the steward.  
23 And the steward, we shared the responsibilities of  
24 the job. And the steward's job basically is to

1 address the grievances from the drivers to the  
2 company. You're basically a middle man. You listen  
3 to the grievances and instruct a driver. If you  
4 think he has got a grievance then you instruct him  
5 what his best action is to take. And then if he  
6 wants to file a grievance then you address it with  
7 the company.

8 Q. Would the steward actually draw up the  
9 grievance?

10 A. No, sir.

11 Q. The driver would do that?

12 A. Yes, the driver has to do that himself.  
13 The steward can't, that's -- the steward can't do  
14 that.

15 Q. But the driver, should he decide to pursue  
16 a grievance, one of the steward's jobs is to help  
17 him through that process?

18 A. Yes, sir.

19 Q. And if there's a hearing on the grievance  
20 would the steward appear at that also with the  
21 driver?

22 A. Well, most likely, sir, you and the  
23 business agent will be the person who does the whole  
24 thing. Very seldom does the driver attend the

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1 grievance hearing.

2 Q. Okay. And who was the business agent  
3 during this same time frame?

4 A. George Foster.

5 Q. And does he still hold that position?

6 A. Yes, sir, he does.

7 Q. Is that an elected position?

8 A. Yes, sir, it is.

9 Q. Mr. Foster, does he also drive?

10 A. No, sir.

11 Q. So his duties are, of the business agent,  
12 full time?

13 A. Yes, sir.

14 Q. And what's that local number?

15 A. 957.

16 Q. Now, when the Marion terminal was in  
17 operation was that part of the 957?

18 A. Yes, sir.

19 Q. Any other terminals that that included?

20 A. I'm sorry --

21 Q. The local 957, were there any other  
22 terminals that that included?

23 A. As far as car hauling?

24 Q. Yes.

1           A.    No, they just had the two.  They just had  
2   the one at Marion and the one there in Moraine.

3           Q.    Any other trades?  Like does that  
4   include --

5           A.    In the union?

6           Q.    Yes.

7           A.    Yes, sir.  We're one of the largest  
8   locals.  We probably have 60, 70,000 members  
9   probably.  I don't know the exact amount, but I  
10  would say that's a pretty good guess.

11          Q.    That would include the auto workers at the  
12  GM plant?

13          A.    No, sir.

14          Q.    They're separate?

15          A.    No, sir.  They belong to the International  
16  Brotherhood of the Electrical Workers.

17          Q.    So from the Teamster's side it's more the  
18  truck driving side?

19          A.    No, sir.  We have policemen, we have  
20  county workers, we have airline pilots, we have a  
21  variety -- airline mechanics.

22          Q.    And Mr. Foster, he's the business agent  
23  for all of those people?

24          A.    No, sir.  That's divided up -- that's

1 divided up amongst the business agents. And each  
2 agent is awarded X amount of what we call barns, in  
3 other words, companies that he represents. And I  
4 don't know all of them that Mr. Foster represents.

5 Q. But among those is the car haulers?

6 A. Yes, sir, it is.

7 Q. These cables that were produced here  
8 today, Mr. Ferguson, to the best of your knowledge,  
9 where did they come from?

10 A. I have not a clue, sir. They were given  
11 to me. Where they came from prior to that I have  
12 absolutely no knowledge.

13 Q. And just so the record is clear, we're  
14 talking about what's been marked as Exhibit Q and  
15 the remainder of that cable and apparently one cable  
16 that's not damaged, correct? Or at least not  
17 visibly damaged, right? Or maybe -- it's intact  
18 anyway.

19 A. Right.

20 MR. WINTER: Let the record reflect that  
21 Mr. Ferguson has examined the intact cable.

22 MR. LARSON: It may so reflect.

23 Q. Who gave them to you?

24 A. George Foster.

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1 Q. When did he give them to you?

2 A. Last Monday.

3 Q. What were the circumstances for that? I  
4 mean, did he call you and say he's got these cables  
5 or what?

6 A. No, not exactly. It didn't exactly work  
7 that way.

8 Q. That's why I'm asking.

9 A. He said he had acquired a couple of the  
10 cables. He didn't say where he got them or who he  
11 got them from.

12 Q. And did he call you?

13 A. No, sir. I called him on some other  
14 business and it came up in the conversation.

15 Q. And he just announced to you that he had  
16 these in his custody and would you like them?

17 A. Not in those exact words, no.

18 Q. Tell me the exact words.

19 A. He just said that he had found some of the  
20 old cables, and I asked him if I could have them.

21 Q. Okay. Do I understand you correctly that  
22 he didn't tell you and you didn't ask as to how he  
23 came into custody of them?

24 A. No. There was no reason why I would.

1 Q. Whether there was a reason or not, that  
2 didn't come up?

3 A. No, sir, I didn't ask him. No.

4 Q. Do you know whose truck these came from?

5 A. No, sir, I don't.

6 Q. Do you know what terminal it came from?

7 A. Like I stated, sir, I don't have no clue  
8 where these came from. They could have came from  
9 Georgetown, they could have came from Ft. Wayne. We  
10 have drivers come that knows Mr. Foster for 30 years  
11 and comes from all over. I mean, I'm not even  
12 sure -- he could have found them in the garbage  
13 because they throw these in the garbage.

14 Q. The cables that are here before us, have  
15 you seen cables like that before?

16 A. Yes, sir.

17 Q. Did you have cables like this at any time  
18 on a rig that you were using or driving?

19 A. Like the yellow one here, yes.

20 Q. And when you say "the yellow one," you  
21 mean the one that's broken?

22 A. Yes, sir.

23 Q. Now, the truck that you were operating at  
24 the time of your injury, 61304 tractor, 71304

1 trailer?

2 A. I believe that was the numbers.

3 Q. How long had you been operating that rig  
4 prior to the day of your accident?

5 A. I'm not real sure, but I believe that was  
6 a spare truck.

7 MR. WINTER: A what truck?

8 A. A spare truck. I believe mine was in for  
9 repairs, for service. I'm not real sure, but I  
10 believe that I was using that as a spare. I don't  
11 believe that was my regular truck.

12 Q. Do you know what model it was?

13 A. It's called a 2878 Quick 12.

14 Q. So it's your best recollection that your  
15 regular rig was in for maintenance?

16 A. As I recall, sir, yeah. I believe that's  
17 true.

18 Q. And your regular rig was what kind of a --

19 A. Same thing.

20 Q. 2878?

21 A. Yes, sir.

22 Q. Now, are Exhibits A, B, C, D and E, and  
23 perhaps even F photographs of the tractor that you  
24 were driving on the day of your accident, or that

1 you were working on on the day of your accident?

2 A. I can't rightly say, sir, because I can't  
3 see the numbers on it.

4 Q. Do you know who took those photographs?

5 A. I know who took the photographs of the  
6 pic-- the photographs of the truck that I fell off  
7 of.

8 Q. Okay.

9 A. Lee Jordan.

10 Q. Lee Jordan?

11 A. Yes, sir.

12 Q. Is he a driver?

13 A. Yes, sir.

14 Q. Do you know when Mr. Jordan took those  
15 photographs?

16 A. The day it happened. I believe he was  
17 with another driver, Bobby Slack. I think they took  
18 them together.

19 Q. Do you know why they took them?

20 A. Please?

21 Q. Do you know why they took the photographs?

22 A. Why they took the photographs?

23 Q. Yes.

24 A. Due to the fact that we had had so many of

1   them break and we just had a guy to get his neck  
2   broke -- I guess Bobby Slack is the union steward so  
3   I guess he wanted to -- he was not -- that's  
4   something you would really have to ask him.

5           Q.   Okay. Did you find out about the taking  
6   of these photographs sometime later?

7           A.   Yes, sir. It was a while later.

8           Q.   Mr. Slack was the union steward?

9           A.   Yes, sir.

10          Q.   Now, based upon your testimony was the day  
11   of your accident the first occasion you had to  
12   utilize the spare truck that you were injured on?  
13   Was that the first day you used that?

14          A.   Oh, I'm sure I've used the truck prior to  
15   that. I may not -- it might have been six months  
16   prior to that, but I'm sure I've drove the truck  
17   before, yes.

18          Q.   Okay. But as of that occasion at least  
19   that was the first --

20          A.   I believe it was.

21          Q.   Your truck had just been shopped?

22          A.   Right.

23          Q.   And you picked this alternate truck --

24          A.   I believe -- to the best of my knowledge,

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1 I believe that I signed for a spare and this was a  
2 spare truck. I don't believe -- I would have to  
3 look at my logbook to refresh my memory, but I do  
4 believe that this was a spare truck that I had taken  
5 because mine was in for repairs.

6 Q. Do you have your logs still?

7 A. I don't know if I do or not. I'd have to  
8 look and see.

9 Q. Okay. We'll make a request for them, but  
10 if you could locate them and give them to one of  
11 your lawyers.

12 A. I can do that.

13 Q. If you can find them.

14 A. Allied should have them.

15 Q. How long are they supposed to keep their  
16 logs?

17 A. I believe their -- here's their attorney,  
18 but I believe their norm is what, six months, then  
19 they get rid of them, destroy them.

20 Q. That's your best judgment?

21 A. That's what I believe they do with them,  
22 isn't it? Six months, something like that.

23 Q. He's not being rude. He's just not here  
24 to testify. At least I don't think he's being rude.

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1 A. I apologize.

2 MR. WINTER: I'm never rude. They just  
3 didn't swear me in yet.

4 A. But I believe in six months they destroy  
5 them. It might even be less than that, I'm not real  
6 sure.

7 Q. Okay. But if you had your logs or they  
8 had your logs it would identify which tractor and  
9 trailer you're operating?

10 A. Yes, sir. It sure would.

11 Q. On any given day?

12 A. Yes, sir. We have assigned bid trucks,  
13 what they call bid trucks.

14 Q. Whether it was a spare or your regular bid  
15 truck how long had you been working with a 2878  
16 quick 12?

17 A. Since their existence. I believe they  
18 started out in '80 -- or excuse me, not '80. I'm  
19 sorry. I believe that their -- when we started  
20 getting them, I believe, they was around '94, '95,  
21 somewhere in around in that neighbor -- I'm not real  
22 sure, but I believe that's when we started getting  
23 them. And I was on that -- that's basically the  
24 truck I've used, 2878.

1 Q. When the new ones started coming in to  
2 your terminal there was a bid process and you were a  
3 successful bidder for that piece of equipment, is  
4 that the way it works?

5 A. I would get -- yeah, that's the way the  
6 system works, yes, every man has to bid.

7 Q. All right. So you were familiar with, if  
8 not necessarily the spare truck on the day in  
9 question you were familiar with that model and the  
10 way it operated?

11 A. Oh, yeah.

12 Q. As to your regular bid truck, had the  
13 cables been traded out on it as of the time of your  
14 injury?

15 A. No, sir, they weren't.

16 Q. Any of them?

17 A. Some of them had been, yes.

18 Q. Do you recall how many of the four?

19 A. I can't really -- I can't really say. But  
20 I knew I had it once before -- I asked them to put  
21 cables on it once before.

22 Q. Now on the day of your accident with the  
23 spare truck did you at any time prior to your injury  
24 examine the cables on that truck to see whether or



1 not the cables had been replaced?

2 A. Are you talking about the truck that I had  
3 the injury on?

4 Q. Correct.

5 A. Well, there would have been no way that I  
6 could have examined the ends of the cables because  
7 there's -- as you can see there's plastic over them.  
8 I mean, there would have been no way I would have  
9 been able to tell if it was broke or not.

10 Q. Well, that wasn't quite my question, but I  
11 appreciate you saying that. Did you examine them to  
12 see whether or not a new or different type of cable  
13 had been installed?

14 A. I had looked up and I had seen that there  
15 was three new ones. Well, actually I seen there was  
16 two new ones on the right hand -- on the passenger's  
17 side.

18 Q. Two new ones on the passenger's side?

19 A. Yes, sir.

20 Q. And did you look at the driver's side?

21 A. When I was up loading the truck I noticed  
22 it had the ring type on it.

23 Q. And the ring type meaning new or old?

24 A. It's just like an O-ring or an eyebolt

1 like type thing, where the cable goes through it  
2 when it takes the -- when it's flopping in the wind.  
3 I take it for granted that keeps the wire from  
4 working or whatever -- I don't know what the  
5 purpose -- I just -- that's my assumption.

6 Q. Okay. And the O type was the new type,  
7 the replacement type cable?

8 A. Yes, sir, the best type.

9 Q. And the --

10 A. They have two types of replacements.

11 Q. What was the other type?

12 A. (Indicating).

13 Q. Like the existing one?

14 A. That one right there (indicating).

15 Q. And you've demonstrated to us the cables  
16 that were brought today that's wrapped in a coil?

17 A. We were told when we had to sit down with  
18 the company after Mr. Fay had broke his neck or  
19 whatever injury he did to his neck -- as far as I  
20 know the man's not working now. He had to retire  
21 over the injury.

22 Q. Okay.

23 A. But we were told that they would replace  
24 them as they got them. And Mr. Weaver, the head

1 honcho in the maintenance department told us that he  
2 was only allowed -- that he was only allowed X  
3 amount of cables at a time. And I assume that  
4 seeing how the truck I had had only had three, I  
5 assumed that they had run out of cables because he  
6 had to get them from Decatur he told us.

7 MR. PAULUS: What was that last part?

8 A. Mr. Weaver had told me and Robert Slack  
9 and the terminal manager which was Tom Heller at the  
10 time, and Bob Donnelly who was one of the district  
11 managers and a Mr. Young who was the district  
12 manager from Decatur, that Decatur would --

13 The maintenance -- the guy was the head of  
14 maintenance down in Decatur. I think his name was  
15 White, Joe White I believe it is.

16 -- would only give them so many cables at  
17 a time because evidently they were -- they wouldn't  
18 let him buy them locally and they made them --  
19 Weaver said -- Mr. Weaver said they wouldn't let him  
20 buy them local that they had to get them from  
21 Decatur. Right. That they wouldn't let them buy  
22 them local to put on the trucks. And that's the  
23 reason we didn't have the cables.

24 Q. Now were you on a conference call with

1 anybody from Decatur at any time to discuss this?

2 A. No, sir.

3 Q. That information that was conveyed to you  
4 that you just told us, how was that conveyed to you?

5 A. We were all in a meeting.

6 Q. And the participants in the meeting were  
7 who again?

8 A. Bill Weaver.

9 Q. Who's the maintenance --

10 A. The Maintenance supervisor.  
11 Superintendent supervisor.

12 Q. Sure.

13 A. Bob Donnelly, who was I guess he would be  
14 the general terminal manager, Tom Heller, terminal  
15 manager; and I'm trying to think of the fellow's  
16 name -- oh, Russ Adams, he's the district manager.

17 Q. Donnelly and Adams were --

18 A. Big wigs. They were higher up in the  
19 company.

20 Q. They were higher up than just the Moraine  
21 terminal?

22 A. Yes, sir. Yeah, they're --

23 Q. And this was a meeting that was held after  
24 Mr. Fay's injury?

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1 A. No, sir.

2 Q. Oh, when was this meeting held then?

3 A. Me and Robert Slack had went in the yard.

4 This was after I had been off a year. And the  
5 cables -- they were still breaking. We went -- we  
6 figured the best time to get these cables taken care  
7 of was to go in while Mr. Russ Adams was there  
8 because he was the district manager. We took a list  
9 of 12 trucks, the numbers of 12 trucks and gave them  
10 personally to Mr. Adams and Mr. Donnelly and the  
11 other union steward. And that's when they said they  
12 were going to fix them. Two months later five of  
13 them were still unfixed.

14 Q. So you had a list prepared of trucks that  
15 had one or more cables on them that had not been  
16 replaced?

17 A. Yes, sir.

18 Q. Who developed that list?

19 A. Robert Slack. Both of us together.

20 Q. You went out and actually looked at the  
21 trucks --

22 A. We just happened to be out in the yard.  
23 We just happened to be in the yard and I looked up,  
24 and I told him that the cable -- that they still

1 hadn't replaced the cables on a lot of trucks. And  
2 Mr. Slack, he is the union steward, and he says,  
3 Well, I'll take care of this. And he got a pencil  
4 and paper and we marked them down and ran them in to  
5 Mr. Adams, and he said it would be taken care of.

6 Q. And when, approximately, did this take  
7 place?

8 A. I can't give you the exact date.

9 Q. The best you can recall.

10 A. It was probably two months before I went  
11 off of light duty.

12 Q. But after your accident?

13 A. Oh, absolutely. It was about a year and a  
14 half, if not longer after my accident. I don't  
15 recall the exact dates.

16 Q. Now, do you know if you or Mr. Slack,  
17 either one of you happened to keep a copy of that  
18 list of the 12 that you gave Adams?

19 A. No, sir, we gave the list to -- Mr. Slack  
20 might have it, but we gave the list -- we showed  
21 Mr. Donnelly, his name is Bob Donnelly, we showed  
22 him the list. Bill Weaver chimed in and said he had  
23 this taken care of, that the cables were being sent  
24 from Decatur, that he wasn't allowed to buy them

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1 locally. And Mr. Slack, I doubt very seriously if  
2 he has the numbers of the truck, but -- if I looked  
3 through my memos at home I might even have them  
4 because it came up later on in a discussion with the  
5 company through the union.

6 Q. Now, based upon what Mr. Weaver said at  
7 that time did you conclude that Mr. Weaver was aware  
8 that there were some cables that had not been  
9 replaced, but they were in the process of doing that  
10 when they would become available from Decatur?

11 A. So I answer this right, just repeat the  
12 question so I make sure I answer this the right way.

13 Q. Did you get the impression from Mr. Weaver  
14 at that time that he was aware that not all of the  
15 cables had been changed out?

16 A. I know darn well he was aware that they  
17 hadn't been changed out.

18 Q. Okay.

19 A. I don't believe it, I know it.

20 Q. Okay. And what do you base that on?

21 A. Because he had been told. I mean, not  
22 only by me, but other drivers, the union. We had  
23 had safety meetings over it.

24 Q. And this is after your fall?

1           A.    Why, yes, it was over a year after my  
2 fall, probably a year and a half, if not longer.

3           Q.    Were there any grievances filed?

4           A.    Yes, there was.

5           Q.    Do you know who filed it?

6           A.    Guy by the name of Joel Hand filed one.

7           Q.    H-A-N?

8           A.    H-A-N-D.  Joel, J-O-E-L.

9           Q.    All right.

10          A.    Now, let me explain what happens when a  
11 grievance is rescinded.  The reason I'm explaining  
12 is so you'll know what happened to the grievance.  
13 Okay?

14          Q.    Sure.

15          A.    If the company agrees in a grievance  
16 hearing that they'll rectify the problem that the  
17 grievant has, in order to keep it from going up the  
18 ladder to a hearing in Chicago or Kansas City,  
19 wherever it may be, the driver can withdraw the  
20 grievance.  Okay.  That's what happened to these  
21 grievances, they were withdrawn.  Okay?

22          Q.    Based upon the representation --

23          A.    Based upon the representation that was  
24 there at the time, but the company said they would



1 take care of this problem.

2 Q. Okay.

3 A. And this was the second time that these  
4 grievances had been filed and the company gave us  
5 the same promise two times in a row.

6 Q. Was Mr. Hand the guy that filed both  
7 grievances or did somebody else do one of the two on  
8 this particular issue?

9 A. I had filed one -- this was after I was  
10 injured.

11 Q. Sure.

12 A. I had filed one, Joel Hand had filed one.  
13 We had heard the same -- we had heard the same  
14 scenario in a grievance procedure probably three  
15 times. Two that I'm absolutely positive of, and one  
16 I think Mr. Foster heard at a panel hearing, that he  
17 had brought it up to one of the Allied  
18 representatives and they said they would take care  
19 of it.

20 Q. And I was just going to ask you, as to any  
21 of those grievances do you recall who on behalf of  
22 Allied was making the representations that it would  
23 get corrected?

24 A. Yes, sir, I do.

1 Q. Who was that?

2 A. Tom Heller, and Tom Kelley was at one of  
3 them.

4 Q. Okay.

5 A. Bob Donnelly, Tom Heller was at another  
6 one.

7 Q. Are records made of those things, minutes  
8 or any other document that would indicate that this  
9 was the action that was taken?

10 A. There is. On occasions there is. But as  
11 a rule, you're rushing through maybe 200 grievances  
12 sometimes. And as a rule yeah, we do keep minutes,  
13 but as a rule if a grievance is withdrawn there's no  
14 record of it.

15 The only ones that we keep is the ones  
16 that the company agrees to pay or the ones that  
17 we've withdrawn -- or, I mean, not withdrawn, but  
18 the ones that is deadlocked to a panel. Then there  
19 is minutes made of those due to the fact that we can  
20 see where the grievance went. But if the grievance  
21 was withdrawn by the driver we will never see it due  
22 to the fact it's given back to the driver and it  
23 usually ends up in the garbage can.

24 Q. Were these grievances filed under the

1 safety article?

2 A. Yes.

3 Q. Were there any grievances, to your  
4 knowledge, filed about these cables prior to your  
5 injury?

6 A. Joel Hand had filed one prior to mine.

7 Q. Prior to your injury?

8 A. Yes. No. Excuse me, sir, I'm sorry, it  
9 was after my injury.

10 Q. Do you know of any that were filed before?

11 A. There wasn't a grievance filed, but it was  
12 a safety meeting complaint.

13 Q. Who made that?

14 A. I'm not real sure. We were in a safety  
15 meeting. It was probably 20, 25 guys at the  
16 meeting. Gary Chinn held the meeting and the cable  
17 issue was addressed by Joel Hand who was on the  
18 safety committee at the time. And we were assured  
19 that the problem was being taken care of. And that  
20 was long before even Mike Fay got hurt because Roy  
21 Thornton had told us in a meeting that he had fell  
22 off a truck in Marion, Ohio, that a cable broke and  
23 he fell off. He had some bumps and bruises, but he  
24 wasn't seriously injured.

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1 Q. So if I understand correctly, you and  
2 other drivers were in attendance at a meeting which  
3 Joel Hand made an issue of the need to correct these  
4 cables?

5 A. Yes, sir.

6 Q. And was it in that same meeting that this  
7 information about Mr. Thornton came to light?

8 A. Yes, I believe it was.

9 Q. Now, was Mr. Thornton in attendance or did  
10 somebody just mention Mr. Thornton?

11 A. I don't know. He was on a different  
12 shift. We were on the second -- at that time the  
13 two terminals were split, and we ran a shuttle to  
14 Marion and they had a night shuttle and a day  
15 shuttle. And Roy Thornton was on the day shuttle,  
16 we were on the night shuttle.

17 Q. But Mr. Thornton was a Moraine driver?

18 A. Yes, he was.

19 Q. The information that you recall being  
20 relayed at that time was that Mr. Thornton had had a  
21 cable break on him and that he had a fall?

22 A. Right.

23 Q. Any discussion about the nature or extent  
24 of his injuries?

1 A. No, sir.

2 Q. If any?

3 A. No, sir. I know that he wasn't seriously  
4 injured because he was still working. Or I assume  
5 that he wasn't seriously injured because he was  
6 still working.

7 Q. Now, I think you indicated that during  
8 that safety meeting that the management  
9 representative from Allied indicated that the  
10 problem was being taken care of?

11 A. He said it was going to be addressed, that  
12 he would take care of it. That was Gary Chinn.

13 Q. Now, in that regard was there any  
14 instruction or warning given by Mr. Chinn or anybody  
15 else to the drivers as to precautions they should  
16 take with respect to working around these cables?

17 A. No, sir. The safety meeting was supposed  
18 to have been held for an hour. It went on for about  
19 15 minutes because he was complaining about having  
20 to pay us for a half hour.

21 Q. Mr. Chinn?

22 A. Yes, sir. The meeting was supposed to go  
23 on for an hour and Mr. Chinn was complaining because  
24 he had only took 15 minutes and we was -- everybody

1 was wanting a half-hour and he was complaining about  
2 he had to pay -- complaining because he had to pay  
3 for the half-hour.

4 Q. Well, are you guys paid for safety  
5 meetings?

6 A. Yes, we are.

7 Q. Is there a minimum that you're paid for  
8 those?

9 A. Well, the safety meetings -- when we have  
10 the safety meetings they're actually -- we're  
11 supposed to have two hours per month per union  
12 contract. We don't have those. We might have a  
13 safety meeting, there might be 5 guys -- there might  
14 be 50 guys go to it one month and they might not  
15 have another one for three or four months. There is  
16 no set -- there's no pattern for safety meetings  
17 there.

18 Q. But when you would go are you paid, by  
19 contract, are you paid --

20 A. We're paid contractually, yes, sir.

21 Q. And are you paid that no matter how long  
22 the meeting lasts? I mean, are you paid for two  
23 hours or one hour?

24 A. They could only hold us two hours. That's

1 contractual.

2 Q. If you go there for 15 minutes you get  
3 paid for two hours?

4 A. No, sir.

5 Q. You don't?

6 A. No.

7 Q. Okay. What do you get paid?

8 A. Fifteen minutes. One quarter hour.

9 Q. Do you put in time for that then?

10 A. Yes. You have to file for your time.

11 Sometimes they just have you sign a blank down time  
12 slip and they pay everybody's name, Social Security  
13 numbers, employee numbers on this list.

14 Q. Did you attend any other safety meetings  
15 in which the subject of breaking cables was taken  
16 up?

17 A. I don't re-- no, I don't think I did. I'm  
18 not real sure.

19 Q. What was your understanding of what was  
20 being done to address the cable issue?

21 A. I can only repeat what was told to me by  
22 Mr. Weaver, that they would do them as they got the  
23 cables in from Atlanta, or Decatur, which is  
24 Atlanta.

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1 Q. And this statement was made before or  
2 after your accident?

3 A. After, and before.

4 Q. And before?

5 A. Yes, sir.

6 Q. Okay. So as of the time of your accident  
7 you were aware that some effort was being undertaken  
8 to replace cables, but that not all cables  
9 necessarily had been replaced, right?

10 A. Well, my personal opinion was that Allied  
11 wasn't doing --

12 MR. WINTER: Object to opinion.

13 A. Okay. All right.

14 Q. What I want to know is as of the day of  
15 your injury you were aware that there were some  
16 cables out there that hadn't been replaced, right?

17 A. I know that Allied was going to get people  
18 hurt by not replacing them, that they had actually  
19 refused to replace them.

20 Q. Wasn't quite my question. What I want to  
21 know is what you knew as of the day of your  
22 accident.

23 A. I knew they were going to get people hurt.  
24 I don't know exactly how I can answer your question



1 except for the fact that Allied caused my injury,  
2 they specifically caused my injury due to negligence  
3 because they would not go by the safety codes that  
4 they themselves had established.

5 Q. Okay. Well, I understand that.

6 A. I'm sorry.

7 Q. I understand your feelings, believe me, I  
8 do, but what I'm trying to do is get to some factual  
9 information.

10 A. Okay. I apologize.

11 Q. No apology necessary. But irrespective of  
12 your feelings about what Allied should or shouldn't  
13 have done --

14 A. Readdress your question.

15 Q. My question is, is it fair to say that as  
16 of the day of your accident that you were aware that  
17 there were cables out there that had not been  
18 replaced?

19 A. The day of my accident?

20 Q. Correct. In the fleet, that they hadn't  
21 replaced all the cables yet.

22 A. Was I -- no, I wasn't absolutely aware of  
23 it. I would have presumed if I would have had to  
24 guess I would have said absolutely they were.

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1 Q. They were replaced?

2 A. No, that they were out there, hadn't been  
3 replaced. No, I knew that they hadn't been  
4 replaced.

5 Q. Okay. That's what I was getting to.

6 A. Right. No, sir, they hadn't been  
7 replaced.

8 Q. With this spare truck that you're working  
9 on the day of your accident, you told me that you  
10 had looked on the passenger's side and seen the  
11 replacement cables up there?

12 A. Yes, sir.

13 Q. Or the O-ring type of a configuration --

14 A. Right.

15 Q. -- that led you to conclude that they were  
16 new cables, right?

17 A. Right.

18 Q. You looked at the other side too?

19 A. And I seen the O-ring and I presumed they  
20 both had them.

21 Q. So you saw one. Did you specifically look  
22 at the lower cable?

23 A. No, I didn't. I didn't specifically look  
24 at the cable.

1 Q. Okay. Now, I'm going to approach this two  
2 different ways, but the first way was just in your  
3 general training without specific regard to this  
4 cable issue, what training, if any, did you have  
5 about whether or not these cables were there for use  
6 as handholds?

7 A. We were told they were safety cables.

8 Q. And --

9 A. That when we were getting out of the  
10 vehicles that we were to use those instead of  
11 hanging on to the side of the vehicle and damaging  
12 and scratching the vehicles. They were put there  
13 for that purpose is what we were told.

14 Q. So the cables were there for you to grab  
15 on to --

16 A. To use.

17 Q. -- as a means of keeping your balance --

18 A. Right.

19 Q. -- or achieving a three-point stance?

20 A. Well, you wouldn't be getting no  
21 three-point stance on top of a head rack, but --

22 Q. Just to be clear, you were instructed that  
23 that cable was there for you to use as a means to  
24 hold on on the head rack as opposed to holding on to

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1 the vehicle?

2 A. When we got the vehicle, sir, when it came  
3 down from Delavan when they were new, we were told  
4 that was a modification because we'd had people  
5 falling off of head ramps. That's the most  
6 dangerous ramp of the truck. As most people -- as  
7 car haulers will tell you, that's the one you have  
8 trouble getting in and out of because there's no  
9 other way of getting out of it except holding on to  
10 the vehicle, in an ice storm, et cetera.

11 We were told that they put the cables on  
12 there as a safety -- that's what they called them,  
13 safety cables that we could use to hold on to to  
14 keep our balance and so forth like that. That they  
15 were there to keep us from falling off the truck is  
16 what we were told.

17 Q. Do you have any recollection of who said  
18 that?

19 A. Not for ten years back I don't, no.

20 Q. And did you use those cables for that  
21 purpose?

22 A. On occasions.

23 Q. Now then the situation began to develop  
24 with the cables breaking, right, where you all began

1 to talk about it in safety meetings?

2 A. Right.

3 Q. And that occurred how long prior to your  
4 accident, best judgment?

5 A. I can't say exactly right to the --

6 Q. Oh, I understand.

7 A. I would say probably --

8 Q. Are we talking about months?

9 A. Yeah, months maybe.

10 Q. And --

11 A. Several months.

12 Q. Was there any -- I may have asked you this  
13 before, but did you get any type of -- you meaning  
14 yourself or the drivers in general, get any kind of  
15 caution that while they're in the process of  
16 replacing these cables that the drivers should avoid  
17 using the cables for keeping balance or for any  
18 other reason?

19 A. I myself have never been -- had no  
20 instructions not to use the cables. As far as I  
21 know, personally, I've never heard nobody tell me  
22 they ever got instructions not to use them.

23 Q. Well, whether or not you got that  
24 instruction, based upon your awareness that some of

1 these cables were breaking, did you yourself then  
2 decide that until I'm satisfied that I've got a  
3 replacement cable, I'm not going to rely upon a  
4 cable for keeping my balance or holding on to it?

5 A. I'm not real sure. Are you asking me to  
6 make a personal judgment what I would know about the  
7 cable or --

8 Q. Yeah, because you're aware that some are  
9 breaking, right?

10 A. I understand your question, but I'm not  
11 sure how -- I'm not sure I know how to answer it due  
12 to the fact that I don't know if the cable is good  
13 or bad.

14 Q. And that's my exact point.

15 A. Because I wouldn't know if this cable  
16 would break or not from looking at it. If I put my  
17 hands on it, it breaks, then it was bad. If I put  
18 my hands on it and it doesn't break, then I guess it  
19 was all right. I don't have -- I don't have that  
20 expertise to know if this cable is going to break or  
21 not.

22 Q. And since you know that some are breaking,  
23 doesn't it make sense then that you aren't going to  
24 trust any of them?

1 MR. KOUSTMER: Objection.

2 Go ahead.

3 A. Well, not necessarily due to the fact that  
4 you're getting out of this vehicle, you're being  
5 told by your employer that the cables are safe,  
6 they're replacing them, that they're good cables,  
7 don't worry about them, if they're on the truck  
8 they're good, they've been checked, they're good.  
9 You trust -- I basically say you would trust your  
10 employer that they would be telling you the truth  
11 that the cables would be good.

12 Q. Okay. When were you told that your cables  
13 had been checked and that they're all good?

14 A. I believe that -- I believe Mr. Palladino  
15 answered that question for me. He --

16 Q. Well, I'm asking you.

17 A. Well, as Mr. Palladino said, you know, he  
18 said they had told everybody that they had replaced  
19 all the cables.

20 Q. I don't think I heard that. But I'm  
21 asking you, who told you that all the cables had  
22 been checked and that they were all fine?

23 A. When the cable -- when you -- when you  
24 send a cable in, you write it up to put it in to

1 have the cables replaced, they're supposed to check  
2 every cable on that truck to see if any more needs  
3 replaced. So if that truck comes out and it's got  
4 three new cables that means that -- I would presume  
5 that they checked the fourth one and it was good.

6 Q. But you're not the one that sent that  
7 truck in to the shop, right?

8 A. Which truck -- the truck that the cable  
9 broke on, no, I didn't.

10 Q. So you weren't aware of the circumstances  
11 because that wasn't your regular truck, of what was  
12 or wasn't done or why? True?

13 A. Well, that's true.

14 Q. And had you looked at that cable that  
15 broke on that day it would have been evident to you  
16 that this was one of the non-replaced cables, right?

17 A. If I would have got up and examined the  
18 cable yes, it would have been.

19 Q. Well, you were right up next to it right  
20 before you grabbed it, weren't you?

21 A. I looked at the cable, sir, I looked --  
22 when I looked at the truck, when I did my walk  
23 around I seen it had four cables on it. I had seen  
24 that some of the cables had been replaced. I



1 presumed that whoever replaced those first cables  
2 would have inspected the whole -- the other -- the  
3 rest of the ones. And if it had one of the old type  
4 on that I would presume that they would have checked  
5 to see if it was okay seeing how that's their job.

6 Q. Okay. So you assumed that if there was  
7 what would be considered original equipment, cable  
8 on there, that somebody had inspected it and made  
9 the decision that it should stay there?

10 A. Sir, there's -- they replaced --  
11 Mr. Weaver and Allied has told us, there's two types  
12 of these two cables right here (indicating).  
13 They're telling us one has a newer type of steel in  
14 it that is better than the old ones we've got. I  
15 wouldn't know if this would be the new one or the  
16 old one.

17 Q. Okay.

18 A. They're telling us that this same exact  
19 cable has got a newer steel in it, it's made  
20 different, and it doesn't rust through like these do  
21 and they don't break.

22 MR. HONERLAW: Just listen to his  
23 questions and just answer his questions.

24 MR. KOUSTMER: For the record, he was

1           picking up the rolled-up cable when he was  
2           talking.

3           MR. LARSON: Could you go back and read my  
4           question back.

5           (Record read.)

6           A. Yes, I would.

7           Q. Okay. Now, from the answer before that  
8           you gave, did I understand you to say that there  
9           were two different styles of replacement cable that  
10          they were using?

11          A. Yes, sir. There was actually three, sir.

12          Q. One that looked like the O-ring like you  
13          mentioned. And did the other look like the original  
14          equipment?

15          A. Yes, sir.

16          Q. So is it your testimony that the cable  
17          that broke on the day of your accident could have  
18          been a replacement cable?

19          A. No, sir, it was original.

20          Q. How do you know that?

21          A. Because of the replacements they've got a  
22          new type of metal that when they're put together  
23          down here they look like they're -- Mr. Weaver told  
24          me that they're pressed a different way or something

1 and that they're all shiny. You can tell they're  
2 new because the bottom part are all shiny.

3 Q. Okay.

4 A. And they've never been painted over.

5 Q. So is it fair to say that it would have  
6 been evident on inspection that this lower cable on  
7 the day of your accident, that that lower cable was  
8 original issue?

9 A. I would assume if I would -- it would have  
10 been original, yes.

11 Q. You could have determined that by visual  
12 inspection, right?

13 A. If it was the new type -- yes, I guess it  
14 could have.

15 Q. If it was the original equipment?

16 A. Right.

17 Q. And likewise, you could have determined if  
18 it was a replacement cable?

19 A. If it hadn't been painted over.

20 Q. Now, the vehicle that you were loading at  
21 the time of your injury, you backed it on?

22 A. Yes, sir.

23 Q. What kind of a vehicle was that?

24 A. It was an S10 Blazer.

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1 Q. Was that the makeup of your load that day?

2 A. I believe so.

3 Q. When you loaded that Blazer did you extend  
4 your ramps out forward?

5 A. Yes, sir, they stay in an extended  
6 position.

7 Q. For the overhang?

8 A. Yes.

9 Q. And what is it, you're allowed three-feet  
10 overhang?

11 A. In front.

12 Q. On the front. Is that what you used?

13 A. I wouldn't have measured it. I would have  
14 presumed that it would have been three foot or  
15 under.

16 Q. Okay. But it was your practice with those  
17 Blazers to take the ramp extension out and use the  
18 overhang?

19 A. Right. They stay in number three position  
20 all the time unless you're loading different  
21 vehicles.

22 Q. And the tie-down slot for that -- we're  
23 talking about the rear of the Blazer -- where is  
24 that situated in relationship to the tire?

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1           A.    It would have been in the rear of the -- I  
2    mean, it depends on what you call the rear.  It  
3    would have been actually behind the right front  
4    tire, passenger's side, right behind the front tire.

5           Q.    Toward the rear of the vehicle?

6           A.    In the front, sir.

7           Q.    Okay.  If you've got it backed on, the  
8    back of the Blazer is up here toward the front of  
9    your head ramp, right?

10          A.    Yes, sir.

11          Q.    So as I'm looking at the vehicle from the,  
12   say the ground on the driver's side, the rear tire  
13   is to my left, right?  Correct?

14          A.    The rear tire --

15          Q.    The rear tires are on the left and the  
16   front tires are on the right as I'm looking at it?

17          A.    Right.

18          Q.    From the ground.  For the rear tie-down  
19   slot is it to the right or the left of that rear  
20   tire as I'm looking at it?

21          A.    It's in -- the rear tie-down slot?

22          Q.    Yes.

23          A.    It's in the front of the tire.

24          Q.    Okay.  Toward the front of the vehicle?

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1           A.    It's behind the -- it's behind the front  
2 wheels and in front of the rear wheels.

3           Q.    Thank you. All right. Is it pretty close  
4 to that rear tire?

5           A.    Yes, sir.

6           Q.    Now, as of the time of your fall had you  
7 already set the hook in that location?

8           A.    Yes, sir.

9           Q.    And then tell me what you did then and  
10 explain to me how the fall happened.

11          A.    I hooked the T hook into the elongated  
12 slot, took up the slack with my left hand in the  
13 chain. They have a special hook that you can take  
14 up the slack in the chain.

15          Q.    Grab hook?

16          A.    Grab hook. I took the slack in the chain  
17 up with the grab hook, put my right hand down on the  
18 trailer ramp, which is the slide part of the  
19 trailer, it slides in and out. It's like a pan  
20 actually. I put my right hand down on that. I went  
21 to get up and I put my left -- I had to stick my  
22 foot back a little ways because I was down basically  
23 hunched into the wheel. I started -- my foot went  
24 back, my foot slipped back a little bit and I just

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1 out of instinct grabbed the cable, and I lifted up  
2 and when I did the cable snapped. When the cable  
3 let loose I grabbed the top cable, trying to stop  
4 from going, but I couldn't. I was already over the  
5 edge of the trailer and that's when I come on down.

6 Q. Did you get ahold of the top cable at all?

7 A. Yes, I did.

8 Q. With what hand?

9 A. Right hand.

10 Q. When you grabbed the lower cable you  
11 grabbed it with your left hand?

12 A. Yes, sir.

13 Q. And did I understand you to say you  
14 grabbed it because you were losing your balance?

15 A. Not exactly losing my balance. My foot --  
16 it's kind of hard to explain it for someone who has  
17 never loaded a tractor-trailer with car carriers,  
18 but I'll try to explain it to you.

19 There's a gap between the two ramps. My  
20 foot rolled over the front roller, or my tip of my  
21 toe went over the roller. I just instinctively  
22 went -- I mean, I wasn't -- I just out of instinct  
23 grabbed ahold of the -- placed my hand on to the  
24 lower safety cable right -- I'd say just a little

1 ways in front of the upright that holds the cable  
2 on.

3 Q. Were you doing that to help yourself stand  
4 up? I mean, was that the purpose for it?

5 A. Do you mean to pull myself up?

6 Q. Yes.

7 A. No. I just -- I just put my -- when my  
8 foot went down, when my foot slipped down a little  
9 ways, I mean, I wasn't going to fall off the truck  
10 at that time. My foot slipped a little bit off of  
11 the front where the two decks connect because I was  
12 down on my knees, I reached up just instinctively.  
13 When I did, I just put my weight on the cable and  
14 the cable let go. But I was getting up.

15 Q. Okay. Your work at that position was over  
16 as far as setting the hook?

17 A. I had set the hook, yes, sir.

18 Q. And you were going to be moving back to  
19 the rear of that side for the next hook?

20 A. No, sir. I had the right -- facing the  
21 vehicle from the back of the trailer, I had the  
22 right-hand side hooked, I was on the left-hand side  
23 hooking it up. I was -- after that -- at that point  
24 I would have tightened them down with a tie-down

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1 bar.

2 Q. Oh, I see. I'm not sure you'll be able to  
3 do this with Exhibit A because it shows the broken  
4 cable, but when you reached your left hand out to  
5 grab the lower cable, where did you grab in relation  
6 to the, say where this red circle is?

7 A. I didn't grab it there at all, sir.

8 Q. Okay. That's what I'm trying to figure  
9 out is where you did grab it.

10 A. It was back here somewhere (indicating).

11 Q. Oh, toward the back?

12 A. Yes, sir.

13 Q. So if we just assume that, just for  
14 demonstrative purposes --

15 A. Yes, sir.

16 Q. -- if the upper rail looks the same as the  
17 lower rail, or cable, right, they both kind of have  
18 that little sag look to them?

19 A. Yes.

20 Q. Since this one's intact I'll just use it,  
21 you would have grabbed it back here to where it's  
22 attached?

23 A. Pretty much, yes.

24 Q. To the post?

1 A. Yes, sir.

2 (Discussion off the record.)

3 BY MR. LARSON:

4 Q. You've seen the injury reports that were  
5 filled out that day?

6 A. Yes, sir.

7 Q. And you signed at least a couple of places  
8 once you filled out and signed Exhibit H-2, correct?

9 A. Yes.

10 Q. And for the information that's contained  
11 at least on the ones that Mr. Palladino filled out  
12 he was getting information from you and writing that  
13 down, is that the way it worked?

14 A. No, sir. I think Mr. Palladino filled his  
15 out after I left. I'm not real sure. I don't  
16 recall -- I don't recall being there when he filled  
17 his out. But that one there I do recall that one,  
18 yes, sir.

19 Q. The information that he writes in his  
20 reports about the accident is information he would  
21 have received from you?

22 A. He would have took it off of mine, yes,  
23 sir.

24 Q. And you talked to him about how it

1 happened?

2 A. Shortly, yes.

3 Q. Did you sit down with him and go through  
4 the questions on this injury reconstruction form  
5 which starts on Exhibit H-3?

6 A. I'll be truthful with you, sir, I can't  
7 remember. I'm not being facetious. I just really  
8 don't really remember it.

9 Q. You've looked at these before, but feel  
10 free to look at them again. Is there anything in  
11 the reports that Mr. Palladino prepared that you  
12 think is incorrect? Why don't we go off the record  
13 and let you do that, and we'll take a short break  
14 because we've been at it for almost an hour. Well,  
15 longer than an hour.

16 (Recess taken: 2:35 a.m. - 2:48 p.m.)

17 BY MR. LARSON:

18 Q. Let's go back on the record. Mr.  
19 Ferguson, I think when we took a recess I asked you  
20 to look at those injury reports that Mr. Palladino  
21 prepared to see if you saw anything that was  
22 incorrect. And have you had a chance to look at  
23 those now?

24 A. Yes, sir.

1 Q. Tell me what, if anything, you see there  
2 that is not in accordance with your understanding?

3 A. It's misleading, sir.

4 Q. In what way?

5 A. The way it says, you know, the way my left  
6 hand was on the lower head rack cable and the other  
7 hand was on the T hook, that would have been pretty  
8 much impossible to do, sir.

9 Q. Okay. You couldn't have had your hand on  
10 one and the other at the same time is what you're  
11 saying?

12 A. It would have been pretty much, I won't  
13 say impossible, but it would have been hard to do.

14 Q. Okay. Anything else that you saw there  
15 that you have a quarrel with?

16 A. No. Other than that this is misleading  
17 the way he's got it written down, it's misleading as  
18 to what I was -- to the position I was actually in.

19 Q. Now, the report that you filled out and  
20 bears your signatures, does that contain your  
21 handwriting, Mr. Ferguson?

22 A. Yes, sir.

23 Q. I'm looking at H-2 for the record.

24 A. It appears so, sir.

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1 Q. You described what happened as follows:

2 "Putting unit on head ramp put T hook in unit. Had  
3 left hand on safet line." Is that right?

4 A. Yes, sir.

5 Q. "Right on tire started to get up from  
6 kneeling position safety line broke causing me to  
7 fall side ways. Hit my back on rial" --

8 A. Yes, sir.

9 Q. -- "of head ramp wile I was falling.  
10 Safet line was rusted into." Did I read that  
11 correctly?

12 A. Yes, sir, you read it correctly.

13 Q. All right. Now, there's no indication on  
14 this form that you filled out about any type of  
15 losing your footing or having your toe catch or  
16 anything on the ramp, true?

17 A. No, sir, it's not.

18 Q. Or it doesn't appear there?

19 A. No, it doesn't appear, sir.

20 Q. Would you agree that if someone were  
21 looking at this for the first time as to your  
22 description of what happened, that they would  
23 believe that you were in the process of getting up  
24 from a kneeling position and had your hand on the

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1 cable in that process?

2 MR. KOUSTMER: Objection.

3 Go ahead.

4 A. I suppose that's possible, sir.

5 Q. Well, what other --

6 A. There's more --

7 Q. -- conclusion --

8 A. -- well, yes, there is a conclusion.

9 There is a leading conclusion there, but there's  
10 more to it than what is stated in this.

11 Q. Okay. Well, you're the guy that fills  
12 this out, right?

13 A. Yes, sir.

14 Q. Now, it does indicate that the safety line  
15 broke causing you to fall sideways. Now, you would  
16 have had your left hand, I think you indicated, on  
17 the cable. So we're talking of falling sideways  
18 from the position you were in on the trailer. Were  
19 you facing forward?

20 A. I was facing -- I was facing the rear of  
21 the vehicle. I mean, the rear of the unit that I  
22 just -- the front of the vehicle, the truck. The  
23 rear of the unit that I was putting on but the front  
24 of the head ramp. I was facing the front of the

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1 head ramp, I guess would be more easier to tell you.

2 Q. Okay. That's -- so that the cable and the  
3 side of the truck of the head ramp would have been  
4 on your left?

5 A. Yes, sir.

6 Q. So when you say causing you to fall  
7 sideways, you're falling to the left as that cable  
8 gives way and your left hand no longer has any  
9 support?

10 A. Yes, sir.

11 Q. At that point in time when the cable gave  
12 way were you somewhere between a kneeling position  
13 and standing up? I'm trying to get a feel for how  
14 your feet and legs were arranged at the time that  
15 the cable gave way.

16 A. I really don't recall --

17 Q. Okay.

18 A. -- how far off the trailer I was when the  
19 cable broke. I can just recall some of the -- we're  
20 talking a matter of seconds here, and like I said, I  
21 can't recall exactly how far up off the trailer I  
22 was at the time.

23 Q. Now, fair to say that you had to be low  
24 enough down that you went under the top cable?

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1 A. Yes, sir.

2 Q. And what is it that, after you went over  
3 the side, what is it that -- what part of your body  
4 first came in contact with something else? Was it  
5 your back? Before you hit the ground did your back  
6 hit something?

7 A. Yes, my back hit the head ramp, but I'm  
8 not quite sure which part of my body hit what first.  
9 I do recall my back hitting the rail, but I'm not  
10 sure if it was my feet hit the side of the truck  
11 first or --

12 Q. Okay.

13 A. What if nothing -- I mean, this is --  
14 we're talking seconds. There's no way I could --

15 Q. I understand.

16 A. I don't believe I could recall something  
17 like that, sir.

18 Q. I understand what you're saying, but can  
19 you point out on Exhibit A what it is that your back  
20 came in contact with?

21 A. Yes, sir.

22 Q. You can put an X on it or --

23 A. When it broke, when this broke I was about  
24 in this position, more than likely was probably in



1 this position (indicating). I reached up with my  
2 right hand, grabbed this. When I did it threw me  
3 side -- I was falling. I grabbed with my right hand  
4 to try to stop.

5 Q. On the top cable?

6 A. Top. I was already going over the side  
7 and I mean I just got it with the upper part of my  
8 fingers and there was no way I was holding on. My  
9 back hit this rail right here (indicating).

10 Q. And you've drawn a diagonal line through  
11 the rail.

12 A. Right. I'm sorry.

13 Q. That's all right.

14 A. But I -- and also hit this and when I hit  
15 the mirror I grabbed on to the mirror and my butt  
16 hit the -- the fender comes over -- pretty far over  
17 this way and I hit the bottom part of the fender.  
18 But I was on my feet, but I didn't stay that way  
19 long.

20 MR. LARSON: Could you read the answer  
21 back.

22 (Record read.)

23 Q. Okay. You hit your feet first once you  
24 got to the ground?

1           A.    Yes, sir.  I was grabbing on to everything  
2   that I could grab on to.

3           Q.    And what is it that came in contact with  
4   the mirror?

5           A.    I'm not real sure.  All I know is the  
6   mirror was bent, when I got down the mirror was  
7   bent.  The mirror was bent because when I fell off  
8   the truck I was twisting and I was grabbing ahold of  
9   everything that was on the truck to grab ahold of  
10  like wet paint.

11          Q.    Is the mirror that you're talking about  
12  this right here (indicating)?

13          A.    Right.

14          Q.    I'm going to put an X just to signify the  
15  mirror.  Is that okay?

16          A.    Yes, sir.

17          Q.    What I'm having a hard time understanding,  
18  you can probably help me with this.  You're holding  
19  on with your left hand and the lower cable gives way  
20  and you're starting to --

21          A.    Fall to the left.

22          Q.    -- fall left sideways over the side,  
23  right?

24          A.    Yes, sir.

1 Q. How is it that you were able to get your  
2 feet back under you so that your feet hit the ground  
3 first?

4 A. Well, sir, when I grabbed on to the cable  
5 behind me I started turning around, okay. That's  
6 how I grabbed my -- that's what caused my back to  
7 hit the rail to begin with.

8 Q. Turning around --

9 A. I was going -- I was doing a complete  
10 turnaround. When I reached back this way, when I  
11 was going to the left I reached back like this and  
12 grabbed the top cable. I couldn't hold on to it.  
13 And when I -- and that's what turned me around to  
14 begin with.

15 Q. So it could have turned you in a  
16 counterclockwise fashion?

17 A. The way you're sitting there, go back the  
18 opposite direction. That's the way I come off the  
19 truck. That's right.

20 Q. Did you spin --

21 A. I spun to my right.

22 Q. Clockwise or counterclockwise?

23 A. When I was falling, like this  
24 (indicating), I started going down. Okay? I

1 grabbed the cable. I was already going off the  
2 truck.

3 Q. All right.

4 A. I grabbed the top cable. And when I did,  
5 by holding on to the cable and my feet coming off  
6 the trailer it spun me around, and that's what got  
7 my back on the rail.

8 Q. And what I'm trying to figure out is which  
9 way it spun you when you --

10 A. It would have had to have spun me to the  
11 right.

12 Q. Can you do it counterclockwise versus  
13 clockwise? That's the easiest way for me to  
14 understand it.

15 A. Okay. I guess that would be clockwise.

16 Q. Clockwise.

17 A. To the right.

18 Q. All right. Just a poor Kansas boy.

19 MR. KOUSTMER: Yeah, right.

20 MR. WINTER: Everybody's reaching for  
21 their billfolds right now.

22 MR. KOUSTMER: Let me put my shoes up. I  
23 didn't wear my boots today.

24 BY MR. LARSON:

1 Q. Okay. When you hit the ground did you  
2 then tumble on down or did you stay on your feet  
3 when you hit the ground?

4 A. No, sir. I went to the ground, but I  
5 wouldn't say tumbled.

6 Q. Okay.

7 A. I didn't do no end over end or nothing  
8 like that, no.

9 Q. Okay. And then after that did you go back  
10 up and try to continue securing that car?

11 A. No, sir. I sat right where I was for a  
12 while.

13 Q. Okay.

14 A. I can't recall exactly how long. It could  
15 have been five minutes, couple minutes, could have  
16 been ten minutes. But I explained that to  
17 Mr. Palladino when I got up there that I had to sit  
18 there for a while.

19 Q. Okay.

20 A. Trying to get my wits about me.

21 Q. Trying to get yourself assessed there and  
22 sit there for a minute?

23 A. Uh-huh.

24 Q. Did you do anything else with respect to

1 your load after that or did you go see Palladino?

2 A. No, sir. I went straight to see

3 Mr. Palladino. That's procedure.

4 Q. Okay. And did you tell him at that time

5 that you thought you might be okay, you wanted to

6 wait and see or --

7 A. No, sir.

8 Q. Wanted to get medical attention right

9 then?

10 A. That's not what happened, sir.

11 Q. Tell me what happened.

12 A. I went to see Mr. Palladino, told him what

13 happened, I told him that the cable had broke -- the

14 safety cable had broke and I fell off the truck and

15 I was in pretty severe pain. He says, Well, can you

16 finish loading? And I says, I don't think so. I

17 says, But I gotta -- I says, I left the pony motor

18 running and all this. I said, I'm going to try to

19 walk back to the truck. So I -- me and him went

20 back to the truck. He took me back in his little

21 Toyota pickup. He left.

22 I walked back up to the trailer by myself.

23 And I told him that -- I said, exact quote, I said,

24 Mike, I don't think I can do this. I said, I'm

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1 hurting real bad.

2 He told me that he had called the clinic  
3 and he had me an appointment for 2, something. I  
4 think he said 2:30 or something like that in the  
5 afternoon. This is at 10:00 in the morning.

6 Q. Okay.

7 A. And so he gave me a ride up to the north  
8 yard, Mike Palladino did, dropped me off. I went to  
9 dispatch, and the rest of it, I went to the  
10 emergency room from there.

11 Q. Did you tell somebody inside the dispatch  
12 office that you wanted to go right to the hospital?

13 A. No, I didn't tell them, sir, they told me.

14 Q. Somebody at dispatch told you you were  
15 going to the hospital?

16 A. Yes, sir.

17 Q. Based on what you told them?

18 A. No, I guess because I was -- she said I  
19 was -- the guys who were standing there said I was  
20 passing out. I don't know.

21 Q. Oh.

22 A. And Ms. Britt came out, Audra Britt came  
23 out and sent me to the emergency room.

24 Q. And how did you get there?

1 A. Driver took me.

2 Q. Do you recall who?

3 A. Ed Bush.

4 Q. Insofar as injuries that you relate to  
5 this incident, are we primarily talking about your  
6 low back and then the leg numbness?

7 A. That's pretty much it, sir.

8 Q. Any other parts of your body that were  
9 injured that you still think are injured as a  
10 result?

11 A. Well, I'm having problems -- I'm having  
12 problems with the upper part of my back, but, you  
13 know, I didn't -- you know, I guess that's my -- I  
14 didn't put it down as a claim for this accident or  
15 anything.

16 Q. So you do have -- is it just below your  
17 neck that you're having some other problems or in  
18 your neck itself?

19 A. It's below my neck. It's below -- yes, it  
20 is, it's below my neck.

21 Q. And do I understand you to say that you  
22 are unable to correlate those complaints to the fall  
23 or do you think they are a result of the fall?

24 A. No, that's not what I said, sir. What I



1 said is basically is -- well, I can't say it, the  
2 lady's here.

3           What I'm trying to say is I did complain  
4 about the problem, but when it was put down it was  
5 put down as a -- everything that happens at our  
6 place is a sprain/strain unless you've got blood  
7 running out of you. And I told them about the neck,  
8 the whole nine yards, but the only thing they put  
9 down was a sprain/strain. Once they put that down  
10 at the emergency room, the rest of it, I mean,  
11 there's no going back on nothing. You're just  
12 pretty much stuck with whatever part of the body  
13 they got down.

14       Q.   Well, the emergency room is separate --

15       A.   Yes, sir.

16       Q.   -- from Allied --

17       A.   I understand that, sir.

18       Q.   -- as far as what they write down, right?

19       A.   I understand that, sir.

20       Q.   And did you tell the emergency room  
21 anything about a neck or upper back problem?

22       A.   Yes, sir, I did. And I seen a kid that  
23 had been on staff for about three weeks right out of  
24 med school.

1 Q. Young doctor?

2 A. Yes, sir.

3 Q. And have you seen your reports from the  
4 emergency room?

5 A. No, sir, I haven't.

6 Q. Do you know what he wrote down?

7 A. No, sir, I'm not -- I don't have a clue  
8 what he wrote down.

9 Q. I'm just trying to understand your answer  
10 then about it being the young doctor. Is it your  
11 suggestion that he got something wrong or didn't --

12 A. No, sir. What I'm saying is he didn't put  
13 down all the complaints that I had.

14 Q. Okay. What did he put down?

15 A. I don't know what -- when I got -- when I  
16 got down to the doctor that they sent me to, right?

17 Q. Sure.

18 A. In Cincinnati, he had got the report from  
19 the emergency room, right, and he said -- I'm just  
20 going by what the doctor had told me that they had  
21 it down as a sprain/strain in the lower lumbar  
22 region.

23 Q. Okay. And you're telling us that you told  
24 that doctor at the emergency room more than problems

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1 that you were feeling with the lower back, is that  
2 what you're saying?

3 A. I told the -- I told the emergency room  
4 physician that -- he says, Where is your most pain?  
5 I told him in the lower part of my back. He said,  
6 Do you have any other pain? I told him about the  
7 neck region.

8 Q. What did you tell him?

9 A. I said, It's hurting up here and my arm is  
10 sore.

11 Q. "It's hurting up here," where, in your  
12 neck?

13 A. Yeah, I said between my shoulder blades.  
14 I said, It's hurting up here also. And I just took  
15 it for granted when I reached up and grabbed the  
16 cable that that's what was causing -- that I had  
17 pulled a muscle or something.

18 Q. Now, have your complaints between the  
19 shoulders continued up until today?

20 A. Sir?

21 Q. Do you still have complaints to the area  
22 of your upper back even today?

23 A. My arms go to sleep, but the doctor says  
24 that they can't -- they can't do nothing about it

1 because it's not on the -- it's not on the, what  
2 they're treating me for. And they won't even treat  
3 me for it and I don't have insurance because my -- I  
4 don't have no insurance and I can't go to any other  
5 doctor, so I'm pretty much stuck.

6 Q. What doctor did you see after you did the  
7 emergency room? I mean did they keep you overnight  
8 when they did that?

9 A. No, sir.

10 Q. What did he do, check you over and then  
11 send you home?

12 A. He put me -- well, what he did, he checked  
13 me over and told me to go my -- he told me to go see  
14 a specialist is what he told me to do.

15 Q. Okay.

16 A. He said make an appointment to see --

17 Q. Who did you see then?

18 A. I saw Dr. McTighe. McTighe.

19 Q. M-C-T-I-G-H-E?

20 A. T-I-G-U-E, I believe is the way he spells  
21 it.

22 Q. Okay. Was he your primary treating  
23 physician then?

24 A. For a while, yes.

1 Q. For a while?

2 A. Yes, sir.

3 Q. As you understand it what was Dr.  
4 McTighe's diagnosis of your back?

5 A. Until we did the MRIs he was treating me  
6 for a sprain/strain. He had MRIs done and -- now  
7 this Mr. McTighe, he's the one that Allied sent me  
8 to.

9 Q. Okay.

10 A. Down in Cincinnati. And he was treating  
11 me for a strain/sprain. He sent me to have an  
12 MRI -- do you want me to tell this whole --

13 Q. Well, just what's your understanding,  
14 after they had the MRI --

15 A. He was treating me for --

16 Q. Did you get a different diagnosis?

17 A. Yes. Yes, I did.

18 Q. Okay. And what did that tell you?

19 A. I had a protruding disc, and the sciatic  
20 nerve, bone spur.

21 Q. Okay. Did that change at all the way in  
22 which you were being treated?

23 A. Pretty much. He said it -- he sent me to  
24 Cincinnati Spine Institute.

1 Q. Who did you see there?

2 A. Dr. Roberts.

3 Q. Okay. Now, prior to September of  
4 2000 when you had this accident we've been talking  
5 about what, if any, injuries to your back had you  
6 ever sustained?

7 A. I had been off -- I had been off a couple  
8 times with a back injury. I believe it was in '84  
9 and '87. I was off a couple weeks in '84, I  
10 believe, and a couple months in '87. I'm not real  
11 sure. Just pulled muscles I believe is what it was.

12 Q. '84 or '94?

13 A. I'm just -- jeez, it would have been '94.

14 Q. '94?

15 A. I'm sorry.

16 Q. And then '97?

17 A. I believe so, yes.

18 Q. Tell me about the first incident in '94,  
19 what happened?

20 A. Just pulled a muscle. Black and blue it  
21 was. I think I was off for two weeks. I don't even  
22 think I received any benefits or anything.

23 Q. What were you doing when you did that?

24 A. Chain broke, I believe it was, the best I

1 can recall. It's been a while.

2 Q. What part of your back was hurting at that  
3 time?

4 A. The middle of my back, lower middle back,  
5 but it was up higher.

6 Q. And what about the second incident in '97?

7 A. I'm trying to remember. I do believe that  
8 that's the time that the vehicle slid backwards and  
9 pulled a tie-down bar out of my hand. I fell off  
10 the truck, I believe.

11 Q. Fell off the truck?

12 A. Yes, I believe it was.

13 Q. From where, what location?

14 A. On the first -- the trailer on the 12 car.

15 Q. Were you on the first level or the second,  
16 on the top deck?

17 A. I was up on -- climbed up on the trailer.  
18 There's no ladders or anything.

19 Q. On the side of the trailer?

20 A. Yes, sir.

21 Q. And you fell on your back?

22 A. Yeah, I believe that's what it was. Yes.

23 Q. What part of your back was hurting after  
24 that?

1 A. Just lower part of the back.

2 Q. Did you receive any medical attention?

3 A. Yes, I did.

4 Q. From whom, do you recall?

5 A. Dr. Autrey.

6 Q. Autrey?

7 A. Autrey, yes.

8 Q. Where is he located?

9 A. Cincinnati.

10 Q. Was he somebody the company sent you to?

11 A. No, sir. I got to Dr. Autrey's address  
12 out of the team care book, which is our medical book  
13 that comes with our benefit package. And I  
14 called -- at that time I believe it was Commercial  
15 Carriers, and they okayed it to go see him.

16 Q. Okay. He was one of the available doctors  
17 under your program?

18 A. Yes, sir.

19 Q. Did you miss some time from work for that?

20 A. I believe it was May to August or  
21 something like that. I'm not real sure. It's been  
22 a while.

23 Q. The '94 incident in which the chain broke,  
24 did you get any medical attention from them, from



1 that time?

2 A. The first day it happened I believe I did.

3 I'm not real sure. It's been awhile.

4 Q. Would that have been in a clinic or

5 emergency room type thing?

6 A. I believe it was their -- which I can't

7 remember.

8 Q. I'm sorry?

9 A. I'm sorry, I can't remember.

10 Q. Okay. What did Dr. Autrey tell you about

11 what the situation was with your back in '97?

12 A. I had a -- pretty much I was off a couple

13 months and went back to work, if I recall. I'm not

14 real sure.

15 Q. Did he tell you what, if any, diagnosis he

16 had?

17 A. I'm not trying to evade these questions,

18 sir. I just -- It's been a while and I just really

19 can't remember. I really don't.

20 Q. All right.

21 A. I mean, if I had some medical records to

22 look at or, you know, some records, I could probably

23 recall. You know, being that long amount of time I

24 really don't remember.

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1 Q. Did you continue to treat with Dr. Autrey  
2 after you went back to work?

3 A. Yes, sir.

4 Q. For how long?

5 A. Dr. Autrey, I just went back to see him  
6 just here not too long ago for a checkup.

7 Q. And what kind of a doctor is he?

8 A. He's an orthopedic specialist.

9 Q. When you saw him here recently was that at  
10 your expense or somebody else's?

11 A. I would assume it would be at Allied's  
12 expense.

13 Q. Okay. What did Dr. Autrey tell you when  
14 you saw him here recently?

15 A. He said that -- I was having a little  
16 problem with my numbness in my arm and stuff and he  
17 pretty much just told me if I got any worse to come  
18 back and see him.

19 Q. Okay. When was the last time you had seen  
20 him prior to this most recent visit?

21 A. I really can't recall. It's --

22 Q. Let me ask it this way --

23 A. It's been probably a couple years.

24 Q. After you saw -- you went to him in '97,

1 immediately after this incident where you fell off  
2 the side of the trailer. Did you then go to him off  
3 and on for a period of time?

4 A. Yes, sir. Off and on, yes. But I don't  
5 recall the dates.

6 Q. Did he have any involvement in your  
7 treatment after the September of 2000 injury?

8 A. No, sir.

9 Q. Did Dr. McTighe, to your knowledge, obtain  
10 your records from Dr. Autrey?

11 A. I don't know if he did or not.

12 Q. On the day of the accident was  
13 Mr. Palladino ever back at your rig with you at the  
14 same time? Did you guys ever go back over there  
15 together?

16 MR. KOUSTMER: After the first time?

17 Q. After your injury. The day of your  
18 injury?

19 A. No, sir, not as I can recall.

20 Q. Now you heard him testify that you went  
21 over there and looked at it and saw your tractor.  
22 But if he did that you weren't there?

23 A. No, sir. You misunderstood what I said.  
24 I believe you did.

1 Q. Okay.

2 A. Well you asked me if -- at the time of the  
3 injury when I went up to the trailer. And if I  
4 recall I told you that Mr. Palladino took me back  
5 over to my truck --

6 Q. Okay.

7 A. -- in his Toyota pickup.

8 Q. Okay.

9 A. Now, what Mr. Palladino observed while he  
10 was there I have no -- you know, I was -- I can't  
11 state what he observed or what he didn't observe. I  
12 don't have a clue what he looked at.

13 Q. He took you back up to where you were  
14 loading?

15 A. Yes, sir.

16 Q. And what was the purpose for that?

17 A. He just took me over to see what -- you  
18 know, look at the truck -- I mean, he took me back  
19 over there because the truck was still running, the  
20 ramps were up, the unit wasn't tied down.

21 Q. Okay.

22 A. 35, \$40,000 unit sitting up there with no  
23 chains on it, truck running.

24 Q. Okay. How did you get down to where he

1 was? Did you walk?

2 A. I walked, sir.

3 Q. How far is that?

4 A. Jeez. I guess probably been a couple  
5 hundred yards.

6 Q. Okay.

7 A. I'm not real sure. It's across the  
8 parking lot.

9 Q. Did you have any bruising to your lower  
10 back, any discoloration or bruising?

11 A. I had some discoloration for a few weeks  
12 after that.

13 Q. Did anybody take any pictures of that?

14 A. No, sir.

15 Q. I'm sorry?

16 A. No, sir.

17 Q. Now, there's been some talk about  
18 Mr. Fay's incident. Did you know Mr. Fay?

19 A. I know him just as a co-worker is all.  
20 Don't know him personally, no.

21 Q. Was he a Moraine driver?

22 A. He was -- no, he was a Marion driver.

23 Q. Was his home terminal ever the Moraine  
24 terminal while you were there at Moraine?

1           A.    I'm not real sure.  I don't know if he had  
2   been transferred down at the time of his injury, but  
3   I believe he was a Marion driver still.

4           Q.    Okay.  And I should ask you this, if you  
5   know, the spare truck that you were using on the day  
6   of your injury, was that truck domiciled to Marion  
7   or Moraine or some other terminal?

8           A.    I couldn't answer that.  I don't have a  
9   clue where that truck was domiciled at.  I would  
10  assume it would either be Moraine or Marion.

11          Q.    Now, did the word get around pretty  
12  quickly that Mr. Fay had fallen as a result of a  
13  cable break?

14          A.    I couldn't answer that.  I assume that  
15  people talked to one another.

16          Q.    Did you become aware of it?

17          A.    I was there the day it happened, sir.

18          Q.    Did you do any type of investigation  
19  yourself?

20          A.    No, sir, I didn't.

21          Q.    How did you become aware of Mr. Fay's fall  
22  on that day?

23          A.    Seeing the ambulance leaving.

24          Q.    Okay.  Did you make any inspection of his

1 tractor-trailer?

2 A. No, sir.

3 Q. Did you make any inquiry as to what  
4 happened?

5 A. I did see the tractor, yes, sir.

6 Q. You did?

7 A. Yes, sir.

8 Q. Were you able to tell if there were any  
9 broken cables?

10 A. I didn't look at it, sir. They just said  
11 he had fell off the truck. Nobody even told me  
12 where he fell from. It was much later that I found  
13 out that the cable had broke on him.

14 Q. Was it prior to your injury that you found  
15 that out?

16 A. Yes, sir.

17 Q. Was there any discussion about that at any  
18 type of a safety meeting format?

19 A. I don't recall any, sir.

20 Q. Any type of discussion insofar as your  
21 position as an assistant union steward?

22 A. Do you mean in regards to Mr. Fay, sir?

23 Q. Yes.

24 A. I don't recall no discussion, no, sir.

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1 Q. Now, was --

2 A. Excuse me, sir. When you say discussion  
3 do you mean did we have a meeting over Mr. Fay or  
4 did we just have a casual talk? I'm not real sure I  
5 know what you're asking.

6 Q. Let me ask you, I took it from what you  
7 said before that you in your position as a union  
8 representative had concerns about the fact that  
9 Allied wasn't addressing this cable issue in a  
10 satisfactory way. Is that true?

11 MR. KOUSTMER: Objection.

12 Go ahead.

13 A. No, sir. I don't think they was  
14 addressing the issue at all.

15 Q. And once it came to your attention that  
16 the driver had fallen and the indication was that it  
17 was because of a cable breaking, did that generate  
18 any activity on your part insofar as your union  
19 responsibilities were concerned?

20 A. I wasn't Mr. Fay's steward. Mr. Fay had  
21 another steward, totally different steward. His  
22 name was Ken Barrett.

23 Q. Did you discuss that with that gentleman?

24 A. No, sir. Mr. Barrett had his own people.



1 We handled ours, they handled theirs.

2 Q. Did it create any concerns on your part  
3 either just because you're a driver or in your  
4 capacity as a union official or representative that  
5 there was still a problem with these cables?

6 A. We turned that over to the local, sir, and  
7 they handle that. After we go so far with it it's  
8 turned over to the local and they take care of the  
9 rest of it. If the company doesn't address the  
10 issues then it's a matter of the local to take up.

11 Q. And that's what I'm wanting to know is  
12 what, if anything, was done by anybody on behalf of  
13 the union?

14 A. Of Mr. Fay?

15 Q. As it relates to the union as to the fact  
16 that he had an accident that appeared to involve a  
17 breaking cable. Do you know of anything that was  
18 done at the union level after that was done, after  
19 that happened?

20 A. Do you mean did the union take up an issue  
21 with Mr. Fay specifically or did they take it up as  
22 a whole that the cable was --

23 Q. Either one.

24 A. I don't think Mr. Fay was taken up as an

1 issue as an individual. The issue was taken up as a  
2 whole for both terminals that this problem wasn't  
3 being rectified. But I don't think Mr. Fay had any  
4 bearing -- well, I'm sure it did to the fact that  
5 the business agent brought it up that there was a  
6 man injured, a couple people injured on it. I'm  
7 sure he brought it up at the mid-level hearings in  
8 probably Kansas City, Chicago, wherever it was  
9 brought up at.

10 Q. Would it be fair to say that based upon  
11 what you had learned about Mr. Fay's injury that  
12 there were still some issues with respect to these  
13 cables on vehicles at Marion and/or Moraine?

14 A. I'm not sure I understand --

15 MR. KOUSTMER: Objection.

16 A. I'm not sure I understand your question,  
17 sir. It seems like I've answered the same question,  
18 but just in a different way about three or four  
19 times. I'm not real sure I know exactly what you're  
20 asking.

21 Q. Okay. Well --

22 A. I believe that you're trying to ask me if  
23 Mr. Fay had any bearing on me or my accident. No.  
24 Mr. Fay is --

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1 MR. KOUSTMER: Just answer his question.

2 Q. Well, the point is that based upon your  
3 awareness of Mr. Fay's accident you were aware that  
4 there were ongoing problems with the cables, right?

5 A. Sir, after Mr. Fay had his accident I  
6 never saw Mr. Fay again.

7 Q. I understand, but the manner in which he  
8 was injured came to your attention, correct?

9 A. Yes, sir.

10 Q. And is it your testimony that that didn't  
11 create any issues so far as you were concerned as to  
12 whether the cables that were still on the vehicles  
13 presented a hazard?

14 MR. KOUSTMER: Objection. I think it's  
15 been asked and answered several times.

16 A. I believe I've answered that question,  
17 sir.

18 Q. Why don't you try it again.

19 A. Okay, sir. As I said in my previous  
20 statement to the question you asked previously, I  
21 looked up, by the time -- yes, I looked up -- they  
22 told us they were fixing cables. I looked up, I saw  
23 new cables on one side of the truck, I presumed the  
24 cables were good because I knew they had been up

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1 there.

2           If they didn't look at the whole thing and  
3 they left one on there that was bad then God help  
4 them. I mean, to me it seemed like if a person  
5 fixed three, wouldn't you fix the fourth one? If  
6 you go up there, you know you got three bad ones and  
7 it's in the shop, you would presume that they would  
8 have looked at the other and said, Well, this one's  
9 okay for the time being or they just didn't have the  
10 cable to fix it or whatever. I don't know what  
11 their problem was.

12       Q.   When you're up there securing that  
13 vehicle, just prior to your injury, that lower cable  
14 was only a couple feet from you, wasn't it?

15       A.   It would be inches, sir, not feet. I  
16 would say it would probably be inches from my face.  
17 I would say probably less than a foot from my face  
18 at times.

19       Q.   I really don't mean to be repetitious, but  
20 I just want to understand. Was your grabbing of  
21 that lower cable on the occasion of your fall simply  
22 a reflex to the fact that you were losing your  
23 footing?

24       A.   I would -- that's exactly what I was

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1 trying to explain to you. I grabbed the cable, just  
2 out of reflex -- when I -- I didn't lose my footing.  
3 I stepped back, there was a gap in between the two  
4 trailers, my toe went in, and I was still getting up  
5 and the tip of my toe came off of the deck. I just  
6 went down that few inches and, out of reflex, I  
7 grabbed the cable, put weight on it, and that's when  
8 it snapped.

9 Q. So if your toe hadn't caught the way you  
10 described it, it wasn't your plan to use the cable  
11 to help yourself up?

12 A. I probably wouldn't have used it, no.

13 Q. And I'm curious as to why that information  
14 does not appear in any of the injury reports. Can  
15 you help me with that?

16 A. I would say it was probably because of the  
17 injury.

18 Q. Why is that?

19 A. I would say -- I would imagine I was  
20 probably trying to get out of there. That report  
21 was taken before I left to go to the emergency room.  
22 They don't let you move until you fill that out  
23 unless you go out in an ambulance.

24 Q. Regardless of the circumstances of giving

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1 the accident report you would agree that it's  
2 important to report correctly and accurately what  
3 happened, true?

4 MR. KOUSTMER: Objection.

5 A. Do I believe that that's important?

6 Q. Sure.

7 A. How it is filled out? I would imagine so,  
8 yes.

9 Q. If you want it to be true and accurate as  
10 to what happened, don't you?

11 A. Yes, sir, I would imagine you would.

12 MR. LARSON: Tell you what I'm going to  
13 do. I'm going to pass you on to one of these  
14 other lawyers here, Mr. Ferguson. Thanks for  
15 your attention and your time.

16 THE WITNESS: Thank you, sir.

17 (Discussion off the record.)

18 CROSS-EXAMINATION

19 BY MR. WINTER:

20 Q. Mr. Ferguson, please tell me what  
21 medications you've taken today.

22 A. I took the medications I described to the  
23 other attorney here. I take them on a daily basis.

24 Q. Do those medications in your viewpoint

1 sitting here today impair your ability to testify  
2 truthfully during your deposition?

3 A. No, sir. I don't think they would impair  
4 my ability to testify truthfully, no.

5 Q. So you've done your best to testify  
6 truthfully and completely today?

7 A. I believe I have, sir, yes.

8 Q. When's your next appointment to treat with  
9 any physician or healthcare giver regarding the  
10 injuries that you've talked about today?

11 A. December the 20th, sir, I believe is the  
12 next appointment.

13 Q. Who will you see?

14 A. I will either see a lady by the name of  
15 Lisa or a gentleman by the name of Michael Simons.

16 Q. Oh, Mitch Simons?

17 A. Yes, Mitch Simons.

18 Q. The pain management guy?

19 A. Yes.

20 Q. And Lisa's with Dr. Simons' office?

21 A. Yes, sir. She is.

22 Q. That's up on Hunt Road, isn't it?

23 A. Yes, sir.

24 Q. Please describe for me why you will be

1 seeing either Dr. Simons or Lisa.

2 A. It's a monthly checkup.

3 Q. Okay. We're not doing a procedure or  
4 test --

5 A. I had shots yesterday, sir.

6 Q. Please describe for me what you received  
7 yesterday.

8 A. I believe they were steroids. I received  
9 two in the back.

10 Q. Have you received any cure or relief as a  
11 result of the injections you received yesterday?

12 A. I'm sore due to the fact you'll be sore  
13 after you get them. You'll be sore for a couple  
14 days. It's --

15 Q. Do they help get rid of pain?

16 A. Yes, sir, they do.

17 Q. How long does the positive effects of pain  
18 relief last after an injection?

19 A. It depends, sir. Sometimes they last  
20 months, sometimes six weeks.

21 Q. How long have you --

22 A. I've had five epidural steroid injections,  
23 which is the spinal injections, plus I've had ten of  
24 the steroid injections.

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1 Q. Will this injection that you have  
2 yesterday be the last in the series of pain  
3 management techniques?

4 A. I couldn't answer that, sir. I believe it  
5 would be, yes. I hope it would be, but I can't  
6 answer that. I really don't know, honestly, I  
7 don't. I just do what they tell me to do pretty  
8 much. You know, I do walking and do whatever they  
9 tell me to do, you know.

10 Q. At the risk of repetition, does the fact  
11 that you received an injection yesterday impair your  
12 ability to testify truthfully today?

13 A. No, sir, I don't believe it does. No.

14 Q. After the December visit that you say is  
15 upcoming, where do you see your treatment going?

16 A. Well, I eventually see my treatment going  
17 back to work. That's why I'm in pain management.  
18 That's the reason I elected to take pain management  
19 instead of having surgery. Because Dr. Roberts told  
20 me and my wife that if I had the surgery that I was  
21 done. But I could fight the pain, go to pain  
22 management, and then I could probably eventually get  
23 back to where I could get the rest of the time in  
24 for my retirement.

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1 Q. We're having a visit next month?

2 A. Yes, sir.

3 Q. With Dr. Simons or one of his colleagues?

4 A. Yes, sir.

5 Q. Okay. Is there a next step that you're  
6 aware of in your treatment regimen that you see  
7 coming or that anyone's told you about, Mr.  
8 Ferguson?

9 A. No, sir. They haven't told me. I've  
10 requested to go back to work, but the company says  
11 that they don't have no work that fits the format  
12 that they've got me on.

13 Q. I meant from a medical side. I didn't  
14 mean from an Allied side. But strictly from  
15 Dr. Simons or any of the other healthcare givers  
16 that you're seeing.

17 A. No, sir, they haven't -- they haven't -- I  
18 believe what you're asking is if I know if I'm --  
19 the treatment will be over with in Dec-- I couldn't  
20 answer that, sir, I don't know. That would be  
21 something that Mr. Simons -- or Dr. Simons would  
22 have to answer on. I couldn't answer that.

23 Q. Right. Not only am I asking you about  
24 your personal knowledge, but has anyone, within --

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1 any doctor told you what will be next?

2 A. No, sir. Hopefully work.

3 Q. Okay.

4 A. And insurance for my family, I hope.

5 Q. If I can get back to the Thomas Foy  
6 incident.

7 A. Fay you mean?

8 Q. Yes, Mr. Fay. If you could give me a  
9 number of days or number of weeks of the period of  
10 time from the time of Mr. Fay's accident until you  
11 became aware that the reason allegedly for that  
12 accident was because of a broken cable.

13 A. I really couldn't do that, sir, because I  
14 wouldn't know how many days it was. I know I didn't  
15 know right -- I didn't know -- actually, I didn't  
16 even know who it was that the ambulance took out of  
17 the -- off of the yard probably until about four  
18 hours later because I was busy doing something else.  
19 I did see the ambulance leave, but we have yard  
20 workers getting hurt all the time. And there's  
21 always somebody getting hurt. It was probably at --  
22 the 6:00 crew was coming in on the shuttle when I  
23 found out that Mike Fay had got hurt.

24 Q. Was it Mike --

1           A.    Nobody said nothing about a cable, they  
2   just said he fell off the truck and hit his head is  
3   what they told me.

4           Q.    I'm just trying to get a flavor or a feel  
5   for the amount of time it was from the time you knew  
6   that Mr. Fay had fallen off the truck until you had  
7   become aware that the reason for his fall was  
8   because of a snapped cable.  And not a matter of  
9   minutes or seconds, of course.

10          A.    Two or three weeks maybe, I guess,  
11   probably.

12          Q.    Approximately --

13          A.    Because I don't think there was that much  
14   time span between mine and his.

15          Q.    So approximately two to three weeks?

16          A.    I would assume, yes.

17          Q.    You're acquainted with a Ray Thornton?

18          A.    Roy Thornton.

19          Q.    Yes, Roy.

20          A.    Yes, sir, I know him.

21          Q.    Who is he, sir?

22          A.    He's an employee at Allied, a driver.

23          Q.    Is he a friend or colleague?

24          A.    No, sir, I just know the guy.

1 Q. Has he had any injuries on the job as a  
2 result of one of these cables failing?

3 A. I don't know if he had medical attention.  
4 I know that he fell off -- the cable broke and I  
5 know he fell off the truck in Marion, Ohio. I don't  
6 know if he had any medical attention or not. I  
7 couldn't answer that.

8 Q. How do you know that he fell off a truck  
9 because of a cable snapping, sir?

10 A. We had a safety meeting. This was  
11 probably a year prior to the Mike Fay incident. We  
12 had a safety meeting. I'm not exactly sure how long  
13 it was, but we had a safety meeting and I believe I  
14 stated once before that that was a safety meeting  
15 with Gary Chinn. And it was brought up by -- Joel  
16 Hand and Roy Thornton -- he was -- the name of Joel  
17 Hand brought up Roy Thornton's name in a safety  
18 meeting that Roy Thornton was the guy who fell off  
19 the truck in Marion, that the cable broke, and  
20 that's what got the whole cable issue started.

21 Q. Okay.

22 A. I mean, as far as our local goes. I know  
23 that they've had problems at other locations with  
24 them because we had been told. Later on we found

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1 out that they had had problems in other locations  
2 and they had replaced cables throughout the system.

3 Q. Who told you that there was a system-wide  
4 problem with cables?

5 A. Management.

6 Q. Who specifically? I'm looking for names.

7 A. Tom Kelley and Tom Heller. We were in a  
8 meeting and they had said that they had had problems  
9 with the cables. Actually, it was Bill Weaver was  
10 the guy that actually we were meeting -- Bill Weaver  
11 is actually the guy who said there had been problems  
12 with the cables breaking.

13 Q. Is this the same meeting that you had  
14 testified to earlier about Messrs. Kelley, Heller  
15 and Weaver being at?

16 A. No, sir, it wasn't.

17 Q. Oh, a separate meeting?

18 A. Yes, sir. Yes, it was.

19 Q. Any idea when this meeting occurred when  
20 this system-wide problem was brought to your  
21 attention? And I'll even take a quarter in a year,  
22 like first quarter of ninety--

23 A. I'd say probably it was latter part of '91  
24 maybe.

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1 Q. '91?

2 A. Or 2000, the year 2000, excuse me -- or  
3 excuse me. It was probably in '99, excuse me.

4 Q. Certainly before your --

5 A. Yes, way before. It was maybe a year  
6 before or something like that. I'm not good at  
7 dates, but it was probably -- it was quite a while  
8 because Mr. Weaver -- they were having -- they were  
9 working -- they don't have a shop at this time they  
10 don't have a garage at this time.

11 Q. So these guys were up in Marion?

12 A. Up in Moraine. In Moraine. When all this  
13 was going on, Moraine don't have no shop or garage  
14 or nothing else. They work on trucks rain, snow or  
15 sleet out in the middle of a parking lot. They  
16 don't have no facility to work on anything at that  
17 time. And I mean, they can't weld or do anything in  
18 the wintertime so they basically don't do a heck of  
19 a lot of nothing. You know, most of the stuff was  
20 just, what we call it, outsourcing, scabbing the  
21 work out.

22 Q. The meeting with Messrs. Kelley, Heller  
23 and Weaver around the 1999 time frame where the  
24 system-wide problem was discussed, and that's what

1 I'm referring to.

2 A. Yes, sir.

3 Q. Please tell me where that meeting  
4 occurred.

5 A. It would have been in Moraine, Ohio.

6 Q. At the trailers?

7 A. No, not at the shop trailers. Shop's got  
8 a little trailer. But we also have an office  
9 building there. Most likely it would have -- I'm  
10 not real sure if it was in Tom Heller's office or  
11 Tom Kelley's office. It was just a casual meeting.  
12 Union and company meet every day about something.

13 Q. As they should.

14 A. Something's going on, somebody's punched  
15 somebody or something's going on all the time. So,  
16 I mean, you can't recall all these meetings because  
17 you're having two or three a day. I really don't  
18 know exactly what the time frame was, but --

19 Q. Happens all the time though, doesn't it?

20 A. Every day. Every day. Two to three times  
21 a day.

22 Q. As it should, right?

23 A. I wouldn't say that.

24 MR. LARSON: Not the punching part.



1 Q. The meeting part's okay. The punching  
2 part's not okay.

3 A. The company just needs to get along.

4 Q. It works that way in the legal profession,  
5 too. We'll put that aside for a minute.

6 Besides Messrs. Kelley, Heller, Weaver,  
7 and Ferguson, who else was there?

8 A. On several occasions --

9 Q. Let me withdraw the question. On this  
10 particular meeting where we're talking about a  
11 system-wide problem with cables, I just want to  
12 know, to the best of your recollection, tell me the  
13 warm bodies that were at that meeting.

14 A. Okay. To the best of my recollection, it  
15 was Bobby Slack was with us at this.

16 Q. Okay. One of these three guys says, we've  
17 got a system-wide problem with cables snapping. Is  
18 that a rough paraphrase?

19 A. No, sir, it's not. It was more like  
20 everybody's having problems with them. When I say  
21 everybody, I take it we're talking system, we're  
22 talking our company.

23 Q. "System" being Allied?

24 A. Allied, yes, sir.

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1 Q. And did they say anything else about  
2 cables at that meeting?

3 A. Said he couldn't get them.

4 Q. Did they indicate to you who they were  
5 trying to get them from, Mr. Ferguson?

6 A. Yes, sir.

7 Q. Who would --

8 A. Decatur.

9 Q. Now, "Decatur" meaning Allied  
10 headquarters?

11 A. Yes, sir.

12 Q. As opposed to some cable manufacturing  
13 firm located in Decatur?

14 A. No, sir. The way I understood it, I mean,  
15 this is my understanding of what goes on, Mr. Weaver  
16 told us that everything he gets, every part he gets  
17 for one of our trucks at that time had to come from  
18 Decatur, Georgia. I believe the guy's name was Joe  
19 White or something like that that's the main honcho  
20 down there. And Mr. White has to okay everything  
21 that goes on as far as like getting cables. I've  
22 seen trucks in the shop for two weeks for a fan belt  
23 coming from Atlanta. I mean, we can go to Autozone  
24 and buy one, but they got it in the shop for two

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1 weeks.

2 Q. Is there a reason for that?

3 A. Yes, sir. They say it's cost.

4 Q. And who's "they" on that one?

5 A. Allied.

6 Q. No. I mean, I need a --

7 A. Mr. Weaver says that it's Allied, that's  
8 the way they keep the costs down at the garages and  
9 stuff. They can keep track of what goes in which  
10 trucks, so forth and so on.

11 Q. The need to go to Decatur for new cables  
12 was expressed to you by Mr. Weaver?

13 A. Yes, sir.

14 Q. Was it also expressed to you by Messrs.  
15 Kelley or Heller at this meeting?

16 A. No, sir, they wouldn't -- they wouldn't --  
17 all they would do, with them being management, all  
18 they would do is tell Mr. Weaver to replace them.  
19 They wouldn't -- they're not mechanics.

20 Q. Well, I'm just saying --

21 A. I mean, they would just tell them what  
22 needs to be done.

23 Q. I'm just going back to the meeting at the  
24 shop.

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1 A. Okay. Right.

2 Q. That's all I'm sort of narrowed in on.

3 Did Messrs. Kelley or Heller tell you at that  
4 meeting what was going to be done with respect to  
5 the cable issue?

6 A. Mr. Kelley just said it would be taken  
7 care of.

8 Q. No specifics?

9 A. No, sir.

10 Q. Did Mr. Heller say anything?

11 A. No, sir.

12 Q. At that time did Mr. Weaver say anything?

13 A. Yes, sir.

14 Q. And in front of the assembled multitude of  
15 five?

16 A. I believe so. I believe that that --

17 Q. And he said?

18 A. He said that he asked for 20 and got 8.

19 Q. And he said that he had asked for 20?

20 A. He said he had asked for 20 cables and got  
21 8 cables. And they were already gone.

22 Q. And "gone" in the sense they were  
23 installed on trucks?

24 A. Right.

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1 Q. And was there any reaction by Mr. Slack or  
2 yourself with respect to that news?

3 A. Yes, sir. We thanked him.

4 Q. Why did you thank you him?

5 A. Anything we can get done to our equipment  
6 we thank him for it because it's hard to get  
7 anything done.

8 Q. Was there any reaction from Messrs. Kelley  
9 or Heller as to that news of 20 requisitions sent,  
10 but only 8 fulfilled?

11 A. No, sir. You've got to understand, sir,  
12 at this time --

13 MR. KOUSTMER: We'll be here all day.

14 I think he's getting tired, he's talking a  
15 lot.

16 MR. WINTER: Do you need to take a break?

17 THE WITNESS: No, let's go on, answer  
18 questions.

19 BY MR. WINTER:

20 Q. Did you ever meet with Mr. Joe White?

21 A. No, sir.

22 Q. Never met the man?

23 A. No, sir.

24 Q. Other than the Kelley, Heller, Weaver

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1 meeting that you discussed that occurred in  
2 approximately the latter part of '99, did you have  
3 any other chance to meet Messrs. Kelley and Heller  
4 where the cable issue was addressed?

5 A. We'd address the issue on several  
6 occasions with the union and the company. I don't  
7 have the time frame.

8 Q. Okay. It just happens that the later part  
9 of '99 was your best recollection the first time  
10 that was addressed with these two fellows?

11 A. No, sir, I think that was after the first  
12 issue -- this has been an ongoing thing, sir.

13 Q. Let me hand you what we marked as Exhibit  
14 T.

15 (Discussion off the record.)

16 (Deposition Exhibit T  
17 was marked for identi-  
18 fication.)

19 Q. Now, have you had a chance to review  
20 Allied Exhibit T?

21 A. Yes, sir.

22 Q. Have you ever seen any of these documents  
23 before, sir?

24 A. The only one I've seen, sir, is the one  
that I've got my name on.

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1 Q. I count that as the fifth page in Exhibit  
2 T; is that accurate?

3 A. Well, it's the fourth one on mine. No, it  
4 would be the fifth page. I'm sorry, yes.

5 Q. I'm publicly educated. If you went to  
6 private school maybe it's the fourth.

7 We're all in agreement it's the fifth; is  
8 that fair to say?

9 A. Yes, sir.

10 Q. All right. I'm looking down at the second  
11 block in the name section. It says Dave Ferguson.  
12 Is that you?

13 A. Yes, sir.

14 Q. There's a number, it says 63894?

15 A. Yes, sir.

16 Q. Under department. What's that mean?

17 A. Employee number, sir.

18 Q. And that's you?

19 A. Yes, sir.

20 Q. AAG under company, it means Allied  
21 Automotive Group?

22 A. Yes, sir.

23 Q. Okay. And it talks about Course Title,  
24 Safety Meeting-Backing Chain. Do you see where I

1 am?

2 A. Yes, sir.

3 Q. And there's a date that says April 12,  
4 1999. Do you see where I am?

5 A. Yes, sir.

6 Q. Do you recall this safety meeting  
7 occurring as indicated with your name on there?

8 A. Not specifically. Not specifically the  
9 date, sir, no.

10 Q. Please turn with me to the first page.

11 A. Yes, sir.

12 Q. Do you see where I am on the first page?

13 A. Yes, sir.

14 Q. There's an item 3 approximately halfway  
15 down the page where it says, "Next we discussed  
16 problems/concerns expressed in our last meeting:"  
17 "3.) Check your clothes lines. If you see any  
18 problems (plastic pulling away, rusting, etc.) have  
19 them replaced. If you are not sure, have Bill or  
20 the shop check them." Do you see where I'm at?

21 A. Yes, sir.

22 Q. To the best of your recollection, did that  
23 discussion occur during this safety meeting?

24 A. I can't say.

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1 Q. Do you refer --

2 A. I knew that it had came up, but I'm not  
3 sure this is the date it was on.

4 Q. Then let me ask the question. I think you  
5 already answered it, but bear with me. Would this  
6 type of topic have occurred at at least one or  
7 another safety meetings?

8 A. Yes, sir.

9 Q. "Bill" being Bill Weaver?

10 A. Yes, sir. I presume. I believe that's  
11 who it would be.

12 Q. No reason to be any other Bill?

13 A. No, sir.

14 Q. And Bill being the safety manager at the  
15 Moraine terminal?

16 A. No, sir. He's a shop superintendent.  
17 He's the maintenance supervisor.

18 MR. WINTER: What did I say?

19 MR. KOUSTMER: Safety.

20 MR. LARSON: Safety.

21 MR. WINTER: See, I'm getting tired too.

22 BY MR. WINTER:

23 Q. Did you get any warning during these  
24 safety meetings about use the cable sparingly if at

1 all?

2 A. No, sir.

3 Q. You don't recall those words being  
4 discussed?

5 A. No, sir.

6 Q. Okay. There's been some discussion during  
7 Mr. Palladino's testimony about a new safety chain.  
8 Do you remember that kind of discussion during his  
9 testimony?

10 A. Yes, I do. I remember his statement.

11 Q. Did you ever hear personally about a new  
12 type of safety chain being used to replace allegedly  
13 defective cable?

14 A. A safety chain?

15 Q. Yes.

16 A. No, sir, I have not heard that. Today was  
17 the first time I've heard of anything about a safety  
18 chain.

19 Q. Did you hear anything about the Moraine  
20 terminal being the test or prototype site for a new  
21 type of cable?

22 A. No, sir. Today is the first time I've  
23 ever heard anything about any of this. I mean, as  
24 far as safety cable or chains or anything like that,

1 about Moraine being the test site, I never heard  
2 nothing about that.

3 Q. I understood you to say that the truck on  
4 which you were injured was a spare truck?

5 A. I believe it was, sir. I'm not absolutely  
6 certain, no, sir. I do believe I was on a spare.

7 Q. I understood you to have one specific  
8 truck assigned to you; is that correct?

9 A. It's a bid truck, sir.

10 Q. And what does that mean?

11 A. It means that that truck, you use it  
12 unless it's in the shop -- if it goes in the shop  
13 then you can take a spare piece of equipment. If  
14 it's in the shop more than 30 days you could bump  
15 another piece of equipment. That's a union term.

16 Q. I don't want to be confusing because I've  
17 never driven a truck before. My brother has, but I  
18 haven't. So would there be a truck that you would  
19 know to yourself as "my truck"?

20 A. Yes, sir. Absolutely.

21 Q. What are the other possibilities that  
22 could be there? There's a spare truck.

23 A. Yes, sir.

24 Q. Is there any other kind of truck that's

1 out there besides "my truck" and "spare truck"?

2 A. I guess that would cover it, sir.

3 Q. Okay. Why was your truck unavailable on  
4 September 7, 2000?

5 A. I can't recall, sir. There could have  
6 been two variations there.

7 Q. To the best of your recollection.

8 A. Best of my recollection, it would have  
9 been in the shop for repairs for something, or we  
10 were on split shift, the truck might not have been  
11 back.

12 Q. Did you have any operator gripes with the  
13 truck before September 7, 2000?

14 A. The truck that I fell off of or my truck?

15 Q. Your truck.

16 A. No, sir. My safety chains were replaced,  
17 sir.

18 MR. LARSON: Cables.

19 A. Safety cables. You got me saying chains.

20 Q. We kind of forced it upon you I suppose.

21 Did you make use of the safety cables on  
22 your truck prior to September 7th, 2000?

23 A. Yes, sir, on occasions I have.

24 Q. The ones that were replaced?

1 A. Yes, sir.

2 Q. How did they work?

3 A. Okay.

4 Q. No gripes?

5 A. I didn't fall off.

6 Q. In general, is working around a terminal a  
7 dangerous thing to do?

8 MR. KOUSTMER: Objection. Go ahead.

9 A. I do believe, sir, a car hauler is  
10 considered one of the most dangerous transportation  
11 jobs in the industry.

12 Q. Just due to its very nature?

13 A. Yes, sir.

14 Q. How do you as a driver make it safe?

15 A. Mostly it's common sense, I guess. Try to  
16 just work with what you have.

17 Q. What have you got that you have to work  
18 with?

19 A. Junk.

20 Q. Pray tell, what do you mean?

21 A. All of Allied's equipment is junk. It's  
22 all outdated, it's all old. Half of it don't run,  
23 it's broke down half the time. They take parts off  
24 one truck to keep another truck running. Basically,

1 you know, that's what I mean by do the best with  
2 what you got.

3 Q. And that was the condition of the  
4 equipment before September 7, 2000?

5 A. I believe it probably still is to this  
6 day, sir.

7 Q. No, but that wasn't my question.

8 A. Yes, sir, it was.

9 Q. And you were working for the company as of  
10 8:00 a.m., September 7, 2000?

11 A. Yes, sir.

12 Q. I understood your testimony to be that you  
13 had driven trucks without the cables installed on  
14 them for at least ten years?

15 A. I don't know that it was ten years or not,  
16 sir.

17 Q. Or approximately ten years?

18 A. It could have been, yes.

19 Q. Could be 8, could be 12?

20 A. Yes, sir.

21 Q. Did you ever fall off the number 1 posit.  
22 before?

23 A. I personally, no, sir, I haven't  
24 personally fell off. But that was a common problem.

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1 Q. But that wasn't my question.

2 A. No, sir, I have not fell off, no.

3 Q. How do you attribute that exemplary safety  
4 record?

5 A. Of not falling off a truck?

6 Q. Off number 1 posit.

7 A. Well, sir, I guess just a lot of the  
8 trucks had wider -- the old ones didn't have the  
9 cables, they had a special plate up there that was  
10 wider than what we got on the ones now. I know we  
11 had some that had like a foot -- plates welded up on  
12 the head ramps. There's walkways. We had some  
13 trucks that had them all the way down each side.  
14 Each terminal modifies their own equipment to meet  
15 their needs.

16 Q. Was there any modifications to this  
17 truck -- let me withdraw the question. Bad  
18 question. We occasionally ask bad questions so  
19 we'll have to clear them up whenever we can.

20 On the truck that you were loading on  
21 September 7, 2000, had there been any modifications  
22 to posit. 1 that you're aware of?

23 A. Not that I was aware of, no.

24 Q. I believe you testified that at least

1 three of the cables had been replaced?

2 A. That I could see, yes, sir.

3 Q. That you could see.

4 A. Yes, sir.

5 Q. And the fourth you reasonably anticipated  
6 that had been tested and tested satisfactorily?

7 A. Actually, I just presumed that it was  
8 replaced with the rest of them or it would have been  
9 good.

10 Q. No reason to believe --

11 A. -- that it was defective, no, sir.

12 Q. Who would have done the testing or  
13 replacing in the ordinary course of Allied's  
14 business?

15 A. I would imagine the shop would have.

16 Q. And that's Bill Weaver's folks?

17 A. Yes, sir.

18 (Deposition Exhibit U  
19 was marked for identi-  
fication.)

20 Q. I'll hand you what's going to be marked  
21 Exhibit U. For the purpose of identification, this  
22 purports to be a document called Work Module 6:  
23 Preventing Slips and Falls on Equipment.  
24 Regrettably I only have one, but I did produce



1 copies of this document to my colleagues earlier  
2 prior to Mr. Palladino's deposition. Mr. Ferguson,  
3 if you could, please, take a look at that document,  
4 let me know when you're done.

5 A. I've looked at it prior.

6 Q. Have you ever seen this before, sir?

7 A. No, sir, I haven't.

8 Q. Have you ever seen documents that are  
9 called modules that discuss or describe safety rules  
10 or procedures --

11 A. No, sir.

12 Q. -- that ought to be used at Allied?

13 A. No, sir. Never seen one before.

14 Q. Have you seen others before?

15 A. No, sir.

16 Q. Let me give you an example. Like, at  
17 Exhibit T, the second page is "Module 2: Proper  
18 Backing Procedures."

19 A. No, sir, I've never seen nothing with  
20 module nothing written on it.

21 Q. Okay.

22 A. This is a new procedure they just started,  
23 I believe. I believe they just started this not too  
24 long ago.

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1 Q. These modules would not have been in  
2 existence on September 7th, 2000?

3 A. I've never seen it, sir.

4 Q. Okay. That's fine.

5 A. I couldn't answer that because I've never  
6 seen it.

7 Q. Notwithstanding that fact, if you'll bear  
8 with me.

9 A. Yes, sir.

10 Q. If you'll please read numbered paragraph 1  
11 entitled Prepare for work.

12 A. "Prepare for work. Decide in advance  
13 which footwear is appropriate for the weather  
14 conditions.

15 "Are the soles in good condition and made  
16 of non-skid material? Leather-soled shoes are never  
17 appropriate."

18 Q. Are those true statements?

19 A. They don't enforce it, sir.

20 Q. No, I'm saying are they true statements?

21 A. Is this what you should do?

22 Q. Yes.

23 MR. Koustmer: I'm going to object. He's  
24 never seen this before. What are you referring

1 to?

2 MR. WINTER: I'm asking are the statements  
3 in module 6 on numbered paragraph 1, Prepare  
4 For Work, good safety rules.

5 A. You're asking my opinion I presume?

6 Q. Yes.

7 MR. KOUSTMER: So he's an expert?

8 A. I'm not an expert, but I would say yes,  
9 number 1 would be --

10 MR. KOUSTMER: We'd like him to be an  
11 expert for trial if I can get stipulations.

12 A. I would say number 1 would be a good thing  
13 to do, yes.

14 Q. But no one at --

15 A. Did they enforce this at Allied?  
16 Absolutely not.

17 Q. No. We have to go -- you just can't at  
18 point blank -- there may be one in there that we do  
19 enforce.

20 A. Yes, okay.

21 Q. And then Mr. Koustmer won't be happy with  
22 you --

23 A. Okay. All right, sir.

24 Q. -- when I hammer you on cross-examination

1 at trial.

2 A. Okay.

3 Q. So bear with me.

4 Okay. It is accurate that a driver ought  
5 to select appropriate footwear based on the weather?

6 A. I would say yes.

7 Q. Do you do that?

8 A. Yes, sir, I do.

9 Q. Do you check the soles of your shoes to  
10 see if they're in good condition and made of  
11 non-skid material?

12 A. I wore work boots, sir.

13 Q. Are the soles in good condition?

14 A. Yes, sir, they are.

15 Q. I'll tell you what, I'll ask a full  
16 question and I'll give you all the time to answer.

17 Deal?

18 A. Okay.

19 Q. And then we'll get out of here real quick.

20 Okay, now the question is are the shoes that you  
21 wear as a driver, the soles in good condition and  
22 made of non-skid material?

23 A. Yes, sir.

24 Q. That's just part of being a safe driver?

1 A. Right.

2 Q. Please review item number 2.

3 A. Inspect your trailer.

4 Q. Well, I mean, you don't have to read it,  
5 just look it over.

6 A. Okay.

7 MR. Koustmer: Objection. He's never seen  
8 the document before until it's been presented  
9 to him.

10 Q. Have you had a chance to review item  
11 number 2?

12 A. Yes.

13 Q. That's of course entitled Inspect your  
14 trailer. Okay?

15 A. Yes.

16 Q. Mr. Ferguson, prior to starting loading  
17 operations do you inspect the treadways of your  
18 trailer or the one that's been assigned to you to  
19 ensure that the treadways are in good condition?

20 A. I don't know what a treadway is.

21 Q. Assume for the sake of argument that it's  
22 a part of a trailer that ought to have non-skid  
23 material on it. Do you inspect your trailer to see  
24 if there's adequate amount of non-skid material on

1 those portions that have non-skid?

2 A. I do a trailer inspection. I do a walk  
3 around.

4 Q. Okay. What happens if you find something  
5 that's inadequate as a result of your inspection,  
6 what's your practice, in response to that?

7 A. Shop the truck.

8 Q. Sir?

9 A. Shop the truck.

10 Q. And that means give it to Bill Weaver's  
11 folks?

12 A. Yes, sir.

13 Q. Have you ever done that?

14 A. Yes, sir.

15 Q. What type of deficiencies can you recall  
16 as being remarkable enough to send it over to  
17 Mr. Weaver's folks?

18 A. Welds, variation of different things.

19 Q. When you say welds --

20 A. Welds.

21 Q. W-E-L --

22 A. When the trailer needed welds.

23 Q. Welding?

24 A. Like a welding torch.

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1 Q. What type of things did you see that  
2 weren't adequate in the way of welding?

3 A. I can't recall specifics. I'm just giving  
4 a statement of things that I have previously -- if  
5 it's not safety related they release it from the  
6 shop and load the truck.

7 Q. Do I understand your testimony that you're  
8 not acquainted with the term treadway?

9 A. Treadways, no, sir.

10 Q. During your inspection of the truck, do  
11 you check to see if the decks are even and resting  
12 on safety pins on both sides?

13 A. That's common practice, yes, sir.

14 Q. And that's your practice?

15 A. Yes, sir.

16 Q. Because it's a safe thing to do?

17 A. Yes, sir.

18 Q. Obviously, you report defects when you see  
19 them to allow repair activities?

20 A. Yes, sir.

21 Q. Please review item number 3, please.

22 A. Yes, sir.

23 MR. KOUSTMER: Objection again. He's  
24 never seen the document before.

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1 MR. WINTER: Let me finish my statement,  
2 then you can object.

3 MR. KOUSTMER: I thought you had finished  
4 your statement. You asked him to review it.

5 MR. WINTER: I was going to say then  
6 entitled Maintain three points of contact.  
7 Same objection I take it?

8 MR. KOUSTMER: Same objection.

9 BY MR. WINTER:

10 Q. Have you had a chance to review number 3?

11 A. Yes, sir.

12 Q. What are three points of contact?

13 A. Don't have a clue, sir.

14 Q. Do you make sure that you have a stable  
15 place to plant your foot whenever you transfer your  
16 weight?

17 A. Yes, sir. I try.

18 Q. And you use handholds whenever possible?

19 A. Wherever possible, sir, yes.

20 Q. What's a handhold?

21 A. It can be a variation of several things.

22 They can have a little steps welded on the side,  
23 like on the head rack's got them. Variation of --

24 Q. I'm handing you what's been marked Exhibit

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1 A, sir. If you could kind of point to me --

2 A. I would imagine this would be a step and a  
3 handhold right there. This one across there  
4 (indicating).

5 Q. So if I marked --

6 A. That's what you have to do to put the  
7 chains in that unit right there.

8 Q. So if I marked A with a circle and A with  
9 a circle in blue ink that would be a handhold?

10 A. Yes, sir, or a foothold.

11 Q. Or a foothold?

12 A. Yes, sir.

13 Q. If you'll look at topic number 4 on  
14 Exhibit U entitled Maintain stability.

15 MR. KOUSTMER: Same objection.

16 A. Yes, sir.

17 Q. Is it your practice as a driver to  
18 maintain stability through the proper foot  
19 placement?

20 A. Are you asking separate from what this  
21 says or what do you want?

22 Q. No. I mean, is that a good rule, item  
23 number 4?

24 A. If you could do it, yes.

1 Q. Do you do it?

2 A. Whenever possible.

3 Q. There are times when it's not possible?

4 A. Primarily about 50 to 60 percent of the  
5 time. There's no way you could.

6 Q. In dealing with the facts and  
7 circumstances that gave rise to your accident, you  
8 couldn't properly place your foot, feet, knees and  
9 other body parts to maintain stability?

10 A. Well, I guess that would be up to the  
11 individual, sir, what he would consider. Because  
12 there's no guidelines that says you stand here at  
13 point A to do the job at point B. It's left up to  
14 the driver where he puts his feet. There's no -- I  
15 mean, there's no Xs marked on a trailer saying put  
16 foot here before you put a chain in. That's up to  
17 an individual where he puts his foot. Yes, you try  
18 to maintain stability at all times, naturally.

19 Q. And I think I heard you say that's a  
20 matter of common sense for the driver?

21 A. Yes, sir, it is.

22 Q. Sir, are there ladder rollers for the  
23 handholds that we've discussed on 3?

24 A. Ladder rollers, sir?

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1 Q. Yes.

2 A. I'm not sure I know what a ladder roller  
3 is. I've never heard the term ladder roller at our  
4 place.

5 Q. If you could take a look at number 5  
6 dealing with Look to see where you are going. There  
7 are three grammatical subparts for that if you could  
8 review that for me, sir.

9 MR. KOUSTMER: Objection.

10 MR. WINTER: Same one?

11 MR. KOUSTMER: Same objection.

12 A. It's common sense, for of all these.

13 Q. All number 4 --

14 MR. KOUSTMER: 5.

15 Q. 5.

16 A. All number 5 would be at the discretion of  
17 the driver and common sense.

18 Q. Please examine then item number 6  
19 entitled, "Use the ladders for climbing."

20 MR. KOUSTMER: Objection. Same objection.

21 A. What's the question, sir?

22 Q. After having read the first sentence in  
23 item number 6 does that help you understand what a  
24 treadway may or may not be?

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1 A. I believe you're talking about what we  
2 call a catwalk.

3 Q. Catwalk. Okay. Let's just assume that a  
4 treadway means a catwalk. Okay?

5 A. That's what we call it, yes, sir.

6 Q. I'm, again, not a truck driver.

7 A. Okay.

8 Q. What's a catwalk?

9 A. It's a narrow space.

10 Q. On a truck?

11 A. On a truck.

12 Q. Is it a good practice to avoid walking  
13 down a catwalk?

14 A. Some of the catwalks are not as narrow.  
15 And the center of the trailer is -- the second  
16 paragraph -- well, sir, a lot of our ladders have  
17 been taken off. I mean cut off.

18 Q. Were there any ladders that were cut off  
19 at the front part of the spare truck that you were  
20 using on September 7, 2000?

21 A. I can't recall, sir.

22 Q. If you could hand over Plaintiff's --  
23 excuse me, Exhibit A. I understand that that is a  
24 true and accurate photograph of the truck at issue?

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1 A. Yes, sir, I believe there is a ladder  
2 missing off this one.

3 Q. Okay. Is there one near the cab part of  
4 the truck?

5 A. A ladder?

6 Q. Yes, sir.

7 A. It would be behind number 2 post there.  
8 It wouldn't be called a ladder. It's footholds.  
9 Foot steps. It would be back here. Right back in  
10 there, behind this post right here (indicating).

11 Q. If you could put your finger on the area  
12 where --

13 A. They've got -- that's a different truck.  
14 There's different type trucks, there's different  
15 models. Some of them have footholds going up here;  
16 some of them don't. Some of them's been cut off.  
17 We've got ladder racks on the trailer and just about  
18 all of those have been cut off. They came from the  
19 manufacturer with ladders on them and a lot of them  
20 have been cut off.

21 Q. Are there any ladders that have been cut  
22 off from the door to the cab forward?

23 A. I can't answer that, sir, because I don't  
24 know what model -- I don't know if the original had

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1 ladders on them. Some of them did, some of them  
2 didn't. Depends on when the trailer was made, so  
3 forth, so on. I don't know the specific model  
4 numbers that had the ladders and the ones that  
5 didn't.

6 Q. You don't know one way or the other as to  
7 this truck?

8 A. No, sir.

9 Q. Do you know, sir, then as to the truck in  
10 Exhibit A if there had been ladders or holds cut aft  
11 of the X?

12 A. I can't tell with this, sir. There's  
13 usually foot steps going right up through, right  
14 through here (indicating).

15 Q. Okay. But you don't know if that was a  
16 situation where they were cut off or they weren't  
17 installed in the first place on this particular  
18 model?

19 A. I didn't -- I can't remember if it had it  
20 on or it didn't have it on. I can't answer that.  
21 It could or it couldn't. You know, I don't know.

22 Q. Based on our discussions that you and I  
23 have had does any of those refresh your recollection  
24 as to what the three points of contact concept is?

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1 A. I think you're misinterpreting this with  
2 what we were taught is a three-point stance. Is  
3 that what you're referring to?

4 Q. All I have is the document in front me.

5 A. I don't know what three-point contact is.

6 MR. KOUSTMER: Objection to the document.

7 A. I don't have a clue what this is.

8 Q. What's a three-point stance? I mean, I  
9 used to play a little football, I know what it is  
10 there, but what does that mean --

11 A. That's exactly what it means. You put a  
12 three-point stance, you got one foot in front of the  
13 other. They call it golfer's stance.

14 Q. Like G-O-L-F?

15 A. Yes, sir. That's what they call it.  
16 That's why it's called the three-point stance. Put  
17 one foot in front of the other when you're getting  
18 ready to do the big drive, you know.

19 Q. Okay.

20 A. That's when you're pulling down on the tie  
21 down, it's called a three-point stance. I believe  
22 that's what you're referring to. Other than that, I  
23 don't know what you're talking about.

24 Q. What's significance about the three-point

1 stance to a driver?

2 A. If at all possible when you can do it it's  
3 common sense you do it. But you can't always do it.

4 Q. What kind of benefits do you get from it,  
5 Mr. Ferguson?

6 A. You can tie the unit down tighter. You  
7 can put more pressure on the tie down bar.

8 Q. And that makes sure that the truck stays  
9 on the truck?

10 A. Well not on that, sir. Divides the  
11 pressure on your arms, your legs evenly.

12 Q. Okay. So you use that to ratchet the  
13 chains to keep the unit tied to the truck?

14 A. Yes, sir. It's called a three-point  
15 stance.

16 Q. Does a three-point stance in addition to  
17 providing you with the ability to torque down the  
18 wrench also give you as a driver greater stability  
19 so you don't fall off?

20 A. You can only do that, sir, on the ground.  
21 You can't do it up high.

22 Q. What do you do up high to maintain  
23 stability?

24 A. When you're tying down a head ramp you've



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1 got to stand both feet side by side because you're  
2 standing in front -- you're standing beside your  
3 vehicle. And you and the vehicle is on the same  
4 ramp.

5 Q. On the third item of item number 6,  
6 notwithstanding, again, the fact that you haven't  
7 seen this, is it your practice not to use the  
8 ladders or steps for storing loose items such as  
9 chains or hooks?

10 A. Do you want my opinion if it's good or  
11 bad?

12 Q. No, I'm asking for your practice as a  
13 driver.

14 A. Every car hauler that hauls cars does it.

15 Q. Uses ladders and chains for --

16 A. Yes, sir.

17 Q. Is that safe?

18 A. To hang your -- tie tarp stirrups and  
19 stuff on there?

20 Q. Yes, sir.

21 A. I wouldn't know if it would be safe or  
22 not. What would be dangerous about tarp straps?

23 Q. You had said every driver. Does that  
24 include Mr. Ferguson?

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1           A.    Every driver that's ever hauled cars has  
2 hooked chains on a ladder. I mean, it's a common  
3 practice and every car hauler who does it does it.

4           Q.    Including yourself?

5           A.    Every car hauler.

6           Q.    Including yourself?

7           A.    Yes, sir.

8           Q.    Okay. Is it your practice not to use  
9 ladders with objects in your hand?

10          A.    It helps you climb when you don't have  
11 your tie-down bar in your hand.

12          Q.    Do you have tie down bars or other objects  
13 in your hand as you climb ladders?

14          A.    Not normally, no, sir.

15          Q.    Sir, if you would, read the items in  
16 numbered paragraph 7 entitled, Always face cargo  
17 units.

18               MR. KOUSTMER: Same objection.

19          Q.    Is it your practice to always face the  
20 cargo units when you enter or leave them?

21          A.    It is my practice?

22          Q.    Yes.

23          A.    When possible, yes.

24          Q.    Under what circumstances would you enter a

1 cargo unit?

2 A. Would you enter a cargo unit?

3 Q. Yes.

4 A. When you're taking it off the truck you  
5 would have -- when you would, like I said, case --  
6 take them all off the head ramp, you would climb up  
7 the ladder facing the unit, we'd walk sideways, open  
8 the door, get in the unit and drive it off.

9 Q. My understanding is on the date of the  
10 accident you drove a unit up to posit number 1?

11 A. I backed the unit.

12 Q. Backed the unit. Did you face the unit as  
13 you were leaving or exiting that unit?

14 A. You have to face it, sir, in order to get  
15 the chains on it.

16 Q. The second item, if you could review that,  
17 sir.

18 A. Yes.

19 Q. Is it your practice to face the units when  
20 you move past them?

21 A. That's always common practice, sir.

22 Q. If you would read the third grammatical  
23 numbered paragraph 7 of Exhibit U.

24 A. "Never face the outside of the trailer

1 when moving past cargo units."

2 Q. Is that your practice as a driver?

3 A. When possible, yes. It's not always  
4 possible.

5 Q. When is it not possible?

6 A. When you're in -- sometimes when you're in  
7 the belly you can't face it. I mean, taking them  
8 out of the belly, behind the trailer -- I mean,  
9 behind the cab, you can't.

10 Q. Would it be accurate to say, Mr. Ferguson,  
11 that the belly or behind the cab portion that you  
12 just testified to would be located to the right of  
13 the X on Plaintiff's Exhibit A?

14 A. It would be right here, sir (indicating).

15 Q. Yes, that's the blue X?

16 A. Right behind the blue X, yes.

17 Q. Yes, sir.

18 A. On the bottom.

19 Q. That's the area you referred to?

20 A. Yes, sir.

21 Q. Are there any other areas of the cab where  
22 it would not be feasible to not face the outside of  
23 the trailer when removing units?

24 A. Like I said, sir, it's usually at the

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1 discretion of the driver. The safest way he thinks  
2 it's safest for him to -- it appears to me that this  
3 is a training slip for new drivers. I'm sure --  
4 they hire new drivers, I'm sure this is a new thing  
5 they came out with. We were never taught none of  
6 this except a few items on here. As a matter of  
7 fact, we were never taught this, period.

8 Q. Have you received formal training on the  
9 items you just talked about or the -- or what  
10 appears in Exhibit U, is it your practice except for  
11 dealing with the belly units that you've identified  
12 on Plaintiff's Exhibit A, except for those, not to  
13 face the outside of the trailer when moving past  
14 cargo units?

15 A. Well, sir, it's common practice to face  
16 the cargo unit in case you start falling you can  
17 grab the antenna, the windshield wiper or tire or  
18 something. Car haulers do that. It's just common  
19 practice. You try to face the unit at any time you  
20 can.

21 MR. WINTER: I think that's all I have,  
22 Mr. Ferguson. Thank you for your time.

23 MR. KOUSTMER: You've got another one to  
24 go.

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1 MR. PAULUS: I'll try to be short.

2 CROSS-EXAMINATION

3 BY MR. PAULUS:

4 Q. As you probably remember I'm Craig Paulus.

5 MR. KOUSTMER: We forgot.

6 MR. PAULUS: Well, you tried to maybe.

7 Q. I believe you testified that Dr. Autrey  
8 saw you for some injuries you received to your back  
9 from another fall; is that correct?

10 A. Yes, sir.

11 Q. And what year was that fall again?

12 A. I don't really recall, sir. It was either  
13 '84 or -- '94 or '97, one of the two.

14 Q. Okay. Did he ever order an MRI, do you  
15 remember?

16 A. I can't recall.

17 Q. Any other tests that you remember besides  
18 an examination, a physical examination of you?

19 A. Maybe a physical. I can't remember the  
20 dates.

21 Q. The day you fell you were loading an S10  
22 Blazer, correct, or tying it down?

23 A. I can't swear that it was an S10 Blazer.  
24 It could have been a Jimmy it could have been an

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1 Oldsmobile Bravada, they're all the same unit. They  
2 just got a different name on them.

3 Q. Do you load any other types of cars  
4 besides that body style of car?

5 A. Yes, sir.

6 Q. Like what?

7 A. Everything.

8 Q. Everything. Malibus, and --

9 A. Yes, sir.

10 Q. Impalas?

11 A. Yes, sir.

12 Q. Okay. I think you testified that you're  
13 taking antidepressants at night before you go to  
14 bed; is that right?

15 A. Yes, sir.

16 Q. Who prescribed those?

17 A. Dr. Simons.

18 Q. Simons?

19 A. Yes, sir.

20 Q. Is he seeing you in regards to any  
21 emotional, mental health issues?

22 A. No, sir.

23 Q. Have you ever seen with your own eyes  
24 design specifications for cables like this?

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1 A. If I saw design specifications?

2 Q. Yes.

3 A. No, sir, I don't believe so.

4 Q. Have you ever seen the design  
5 specifications for a head rack in general?

6 A. No, sir.

7 Q. Who designed the hand cable, to your  
8 knowledge, the one that broke?

9 A. My honest opinion?

10 Q. Well, do you know facts --

11 A. I don't know who designed it, but I know  
12 why they designed it. I mean, I know who put the  
13 idea in their head. It was one of our drivers was  
14 sent to Buffalo to tell them what he wanted on the  
15 trucks.

16 Q. Okay.

17 A. That's what I understand.

18 Q. I ask because in your interrogatory  
19 responses you identified in response to  
20 Interrogatory Number 10 that Defendant Hanes  
21 designed the hand cable. Do you have any firsthand  
22 knowledge of who designed the hand cable?

23 A. No, sir, I have not a clue who made that  
24 hand cable. I've never heard of your --

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1 MR. KOUSTMER: For the record, that was  
2 answered by the attorney.

3 THE WITNESS: Yes, I didn't even know who  
4 designed, made, manufactured, nothing else that  
5 cable.

6 MR. KOUSTMER: For the record that was  
7 answered by the attorney, by us.

8 MR. PAULUS: Do you have any fact  
9 witnesses who can tell us that?

10 MR. KOUSTMER: Well, you can ask more  
11 interrogatories. I'm like him, I'm not under  
12 oath yet.

13 MR. WINTER: But I can hardly wait for  
14 that to happen, Mr. Koustmer.

15 MR. PAULUS: I asked in Interrogatory  
16 Number 3: Identify all persons answering,  
17 assisting in answering or providing information  
18 or documents used in answering these  
19 interrogatories and the answer is David  
20 Ferguson.

21 BY MR. PAULUS:

22 Q. Has anybody ever told you that Hanes  
23 Supply designed these hand cables?

24 A. No, sir, I was under the impression that

1 Delavan did.

2 Q. Okay.

3 A. I don't know who designed them. I know  
4 who I was told designed them. We've always been  
5 told that the manufacturer was Delavan, as far as I  
6 knew. I don't know.

7 (Discussion off the record.)

8 BY MR. PAULUS:

9 Q. The truck that you referred to as your  
10 regular truck, I think you called it your bid truck?

11 A. Yes, sir.

12 Q. Was that your truck from the day it  
13 arrived at Allied or at your employer?

14 A. No, sir.

15 Q. Somebody else used it before you?

16 A. Yes, sir.

17 Q. When did you start working with it?

18 A. It would have been at the truck bid. I'm  
19 not -- annual truck bid. I'm not sure when that  
20 was.

21 Q. You don't know which year you got it?

22 A. No, sir.

23 Q. Do you know how old the truck was?

24 A. I believe it was '95, '96. Around in

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1 there. I think it was one of the older 2878s.

2 Q. Earlier you used the word "junk" to refer  
3 to some of the equipment you worked with at Allied.  
4 Was the truck at the time you started using it  
5 showing some wear and tear? Was it worn out?

6 A. Yes, sir.

7 Q. My next question is about some of these  
8 cables we have in front of us. I'm going to show  
9 you this coiled up cable. Can you see in the middle  
10 section here, I know it's coiled, but can you see  
11 the metal cable inside the plastic?

12 A. Yes.

13 Q. It's not opaque. You can see through it?

14 A. Yes, sir. I can see the steel, yes.

15 Q. On the ends it appears to be painted?

16 A. Yes, sir.

17 Q. Is that one way you can tell the  
18 difference between a cable that's been replaced and  
19 a cable that hasn't been replaced, whether they're  
20 painted?

21 A. Sometimes, sir, they send them out to be  
22 refitted. They call them refits. They paint them,  
23 put new valves on them, hydraulics. It's hard to  
24 say. You don't know why the paint is on there or

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1 how long it's been on there.

2 Q. Have you ever seen a new truck come from  
3 the factory?

4 A. Yes, sir.

5 Q. Are they painted then?

6 A. Y, sir. Sure are. To the best of my  
7 knowledge, they're painted.

8 Q. They're not painted in the center, but  
9 they're painted on the outsides; is that right?

10 A. As far as I know, sir, they look just like  
11 this.

12 MR. WINTER: This being of course --

13 A. The yellow one, sir.

14 Q. The yellow one?

15 A. Yes, sir. When the trucks come from  
16 Delavan everything's painted yellow except the seat.

17 Q. Now, these here are all painted with some  
18 green. Do you know when they were painted green,  
19 who painted them green?

20 A. No, sir, I don't.

21 Q. Are the Allied trucks now green?

22 A. Some of them -- Allied's original colors  
23 are green and white. See, Ryder's was red and  
24 black. So when Allied took over Ryder or Commercial

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1 Carriers, the truck that was originally yellow, they  
2 just left them yellow.

3 Q. Is it your testimony that where it's been  
4 painted that can obscure the metal cable underneath  
5 and impair your ability to see if there's been any  
6 deterioration of the metal?

7 A. Yes, sir.

8 Q. Okay. And you don't know who painted the  
9 cables?

10 A. No, sir.

11 MR. PAULUS: If you can give me one more  
12 minute. I think that's going to be all I have.

13 MR. LARSON: I've just got a couple.

14 MR. PAULUS: Go ahead.

15 CROSS-EXAMINATION

16 BY MR. LARSON:

17 Q. Just to clarify something, Mr. Ferguson,  
18 the hook that you had just installed right before  
19 you went over the edge, which hook, which location  
20 on that cargo unit was it that you had just  
21 installed the hook into?

22 A. Do you mean where I put the T hook?

23 Q. Correct.

24 A. It was behind -- it was behind the front

1 passenger's side wheel, right front wheel.

2 Q. So it was --

3 A. The unit's back on.

4 Q. Since you backed it on it was toward the  
5 rear --

6 A. It was pretty much over the driver's door.

7 Q. -- of the number 1 posit.?

8 A. It was pretty much over the driver's door.

9 Q. And tell me whether or not this is a true  
10 statement: Would it be correct that you wouldn't  
11 have knowingly placed your hand on a cable that you  
12 knew was the original cable?

13 MR. KOUSTMER: Objection.

14 Go ahead.

15 Q. For purposes of support.

16 A. I wouldn't say that, sir. I took -- like  
17 I told you in my previous statement, that I saw  
18 three new brand-new cables with, you know, the new  
19 style hooks on them and I just took it for granted  
20 everything was safe on it. I mean, I didn't even  
21 notice that the fourth one didn't have it on.

22 Q. That was the nature of my question.

23 A. No sir, I didn't --

24 Q. You're saying you didn't know it was an

1 old cable?

2 A. No, sir.

3 Q. And my question is if you had known you  
4 wouldn't have knowingly or willingly used that cable  
5 for support?

6 MR. KOUSTMER: Objection.

7 A. Well, no, sir. I wouldn't have -- I  
8 wouldn't have put my hand on the cable if I knew it  
9 was going to break, no.

10 Q. Knew or suspect it might break, right?

11 MR. KOUSTMER: Objection.

12 A. Sir, I wouldn't know if it would have  
13 broke or not. Because if it would have been painted  
14 over, there would have been no way I would have knew  
15 it would have broke.

16 Q. I understand we've been through that. But  
17 my question is if you knew that you're dealing with  
18 cables that were original issue, okay, and you knew  
19 that there were problems with original issue cables,  
20 I'm simply trying to establish, with that foundation  
21 of knowledge, you wouldn't have knowingly placed  
22 your hand on one of those cables for support based  
23 upon what you knew about them, right?

24 MR. KOUSTMER: Objection.

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1           A.    Sir, I wouldn't have knew if it had been  
2 original or not because these trucks have been  
3 painted over so much I wouldn't have -- I mean, it  
4 would have been impossible for me to even know if it  
5 was the original one, the new one or -- because as  
6 you can see, there's two styles there and they're  
7 different type cables. I wouldn't have never knew  
8 this.

9           Q.    You were able to tell three of the four  
10 had been replaced?

11          A.    Sir, I seen the two on the passenger's  
12 side of the truck.

13          Q.    You knew those were new cables?

14          A.    Yes, sir. Those two on the passenger's  
15 side. Okay?

16          Q.    Right.

17          A.    After I had fell off the truck I looked up  
18 and seen the third one was a new one.

19          Q.    So you didn't check at all on the driver's  
20 side?

21          A.    Sir, like I said, there was three new  
22 cables on it. I took for granted there was four.

23          Q.    Okay. My question is did you check, at  
24 all, the cables on the driver's side before you

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1 worked on the equipment?

2 A. I seen the cables --

3 MR. KOUSTMER: Objection. Asked and  
4 answered.

5 MR. LARSON: Well, I thought it was, but  
6 I'm confused now.

7 MR. WINTER: It was asked. I haven't  
8 heard an answer yet.

9 MR. KOUSTMER: Well, I mean it's been  
10 asked and answered before.

11 Go ahead. We don't need to debate it. Go  
12 ahead.

13 THE WITNESS: Do you want me to answer it?

14 MR. KOUSTMER: Yeah, go ahead.

15 A. What again did you exact -- did you want  
16 to know if I knew there was a third cable that was  
17 on there that had been replaced?

18 BY MR. LARSON:

19 Q. Did you check the driver's side cables?

20 A. I looked at -- I visually checked the  
21 cables, yes, sir. I didn't inspect them inch by  
22 inch, no.

23 Q. The last question I have is you said that  
24 for reasons you described you didn't want to have

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1 surgery performed by Dr. Roberts or anybody else.

2 A. No, sir.

3 Q. Do you understand or have any knowledge as  
4 to what surgery that they would do if they were to  
5 perform surgery?

6 A. I knew -- all the knowledge I have is what  
7 Dr. Roberts told me and my wife. When he brought us  
8 in for a consultation I know what he told us.

9 Q. What did he tell you?

10 A. He told me if I had the surgery I'd never  
11 drive again. I need six years to get my pension.

12 Q. Okay. My question is what surgery would  
13 he perform if he were to do it?

14 A. He said he would fuse my spine.

15 MR. LARSON: Thank you.

16 MR. WINTER: I have two. .

17 CROSS-EXAMINATION

18 BY MR. WINTER:

19 Q. Who is the driver who started the design  
20 of the cables?

21 A. David West.

22 Q. W-E-S-T?

23 A. W-E-S-T, right.

24 Q. Is he still with the company?

1 A. Oh, yeah.

2 Q. Okay. I thought I had heard you say that  
3 Phil Kuchar had demanded that all the cables be  
4 retrofitted?

5 A. No, sir, I didn't say that.

6 Q. Oh, I must have misunderstood.

7 A. I think he did (indicating). I didn't say  
8 Phil Kuchar demanded that no, sir.

9 Q. It's Kuchar, right?

10 A. Yes, sir.

11 MR. KOUSTMER: I think I asked  
12 Mr. Palladino a question about Phil, but he  
13 hadn't said anything about Phil.

14 A. I didn't say that. No, sir I didn't say  
15 that.

16 Q. I misunderstood then.

17 Was Mr. Kuchar on the safety committee?

18 A. At what time, sir? We've had so many  
19 safety committees. We've had more safety  
20 committees -- each month they've got new people on  
21 it. I couldn't tell you.

22 Q. Was Mr. Kuchar on any safety committee?

23 A. I know he has been on safety committees,  
24 yes. Safety committee usually consists of whoever's

1 standing there at the time they want to do the  
2 safety meeting. That's usually the safety  
3 committee. There's no set rule for this.

4 Q. What role does Mr. Kuchar play at the  
5 company?

6 A. He's a driver. Just strictly a driver.

7 Q. Does he hold any office with the union?

8 A. No, sir.

9 Q. Do you know one way or the other whether  
10 he was taking a stand with regard to the cables that  
11 were allegedly failing?

12 A. I can't answer that. I don't know what  
13 Mr. Kuchar thought. I never had no discussions with  
14 him about it.

15 Q. So I think I heard you say I don't know.  
16 Is that fair to say?

17 A. Yes, sir. I don't know.

18 MR. WINTER: Thank you. I have nothing  
19 further.

20 MR. KOUSTMER: Okay. You're beyond your  
21 two, but we're going to let you go.

22 MR. PAULUS: Famous last words. I just  
23 have two more questions.

24 CROSS EXAMINATION

1 BY MR. PAULUS:

2 Q. In the course of your duties when you were  
3 a driver, how frequently did you pass the dispatch  
4 desk?

5 A. Every time you dispatch.

6 Q. Is that every day?

7 A. Yes, sir, at that time it was every day.

8 Q. And not to go too far back into this, but  
9 at the time you made a visual inspection of the  
10 truck that you fell off of, when you looked at the  
11 passenger's side how did you know that those two  
12 hand cables were new, newer models?

13 A. It's -- the ends are --

14 MR. KOUSTMER: Objection. Asked and  
15 answered, but go ahead.

16 A. Okay. They're like an eyebolt and then  
17 they're shiny, as you can see --

18 Q. An eyebolt rather than this design that we  
19 have?

20 A. Yes, sir. Totally different. I mean,  
21 visually you can see it from a mile away.

22 MR. PAULUS: Thanks. That's it.

23 MR. KOUSTMER: Okay, guys, is that it?

24 MR. WINTER: I think we need to say one

1        thing on the record and that is I'll go ahead  
2        and take custody of these cables, except for  
3        Plaintiff's Exhibit Q.

4                MR. KOUSTMER: The court reporter is  
5        keeping Q.

6                MR. WINTER: I'll take the rest if anybody  
7        needs them.

8                MR. KOUSTMER: But you'll make them  
9        available.

10               MR. WINTER: On reasonable notice.

11               MR. KOUSTMER: On reasonable notice for  
12        testing, if anybody wants to get them tested.

13               MR. WINTER: For any other purpose. Just  
14        as long as everybody gets notice of the test  
15        and what is anticipated during the test.

16               MR. KOUSTMER: We're in federal court. I  
17        mean, you're going to have to hand over any  
18        test you do on this cable.

19               MR. PAULUS: My client might just want to  
20        look at these things. I don't know if they  
21        will or not.

22               MR. LARSON: Why don't we just all agree  
23        if anybody wants access to them that everybody  
24        notifies everybody else so that everybody knows

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1           what's going on.

2                   MR. KOUSTMER:  Sounds good.

3

4                                   DAVID EDWARD FERGUSON

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7                   (Deposition concluded at 4:52 PM.)

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1 C E R T I F I C A T E

2 STATE OF OHIO :  
3 COUNTY OF HAMILTON : SS:

4 I, Wendy L. Welsh, a duly qualified and  
5 commissioned notary public in and for the State of  
6 Ohio, do hereby certify that prior to the giving of  
7 his deposition, the within named DAVID EDWARD  
8 FERGUSON was by me first duly sworn to testify the  
9 truth; that the foregoing pages constitute a true  
10 and correct transcript of testimony given at said  
11 time and place by said deponent; that said  
12 deposition was taken by me in stenotypy and  
13 transcribed under my supervision; that I am neither  
14 a relative of nor attorney for any of the parties to  
15 this litigation, nor relative of nor employee of any  
16 of their counsel, and have no interest whatsoever in  
17 the result of this litigation. I further certify  
18 that I am not, nor is the court reporting firm with  
19 which I am affiliated, under a contract as defined  
20 in Civil Rule 28 (D).

21 IN WITNESS WHEREOF, I hereunto set my hand and  
22 official seal of office, at Cincinnati, Ohio, this  
23 15th day of December, 2002.

24 MY COMMISSION EXPIRES: WENDY L. WELSH, RDR-CRR  
NOVEMBER 20, 2005. NOTARY PUBLIC, STATE OF OHIO

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1 December 15, 2002

2 Mr. David Edward Ferguson  
3 c/o Thomas R. Koustmer  
4 1800 Federated Building  
5 7 West Seventh Street  
6 Cincinnati, Ohio 45202

7 In re: Case No. C-1-02 039, Ferguson, et  
8 al. vs. Ryder System, Inc., et al.

9 Dear Mr. David Ferguson,

10 Your deposition has been completely transcribed and  
11 is hereby submitted to you for your review pursuant  
12 to the applicable Federal Rules of Civil Procedure.

13 The original transcript is available for reading,  
14 signing and correcting at this office during busi-  
15 ness hours of business days, and shall remain so for  
16 a period of thirty (30) days. The above-mentioned  
17 rule allows you to make any changes in form or  
18 substance which you desire to make, which will then  
19 be attached to the record with the reason(s), if  
any, for making them.

20 If your deposition is not signed within the time  
21 period allowed, I am required to sign it and state  
22 the fact of your failure to do so, and your depo-  
23 sition may then be used as though signed by you.

24 Your time limitation requires that your signature  
page and any corrections you wish to make be  
returned to me at my office on or before --  
, 2002. Please call the phone  
number below if you have any questions regarding  
this procedure.

Sincerely,

Wendy L. Welsh, RMR-CRR

cc David E. Larson, Esq.  
Craig R. Paulus, Esq.  
Robert A. Winter, Jr., Esq.  
Michael J. Honerlaw, Esq.  
Thomas R. Koustmer, Esq.

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